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Legal and political nature of Eurasian integration

MA Thesis

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Author's declaration

I have written this Master's thesis independently. All viewpoints of other authors, literary sources and data from elsewhere used for writing this paper have been referenced.

Artur Simonyan

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Abstract

The Eurasian Economic Union was formed in 2015. After the establishment of the new regional organisations, it triggered scientific engagements both from political and economic circles. Although some legal scholars, both in Russia and the Western world, researched some aspects of the EAEU from the institutional and substantive side, there is still a lack of understanding of the EAEU as a separate legal order. This thesis attempts to fill this gap by studying the EAEU through its own conceptual frameworks of authoritarian supranationalism. Illustrating both the history and legal structure of the Eurasian integration, the thesis highlights the different nature of the concepts that have shaped the evolution of the EAEU. The thesis combines history, politics, and law to demonstrate the *sui generis* essence of the EAEU legal order. For this purpose, particular attention is given to supranational law-making, adjudication, and direct applicability of the EAEU norms.

Methodologically, it opted for interdisciplinary research to appraise the EAEU as comprehensively as possible. However, the main argumentation remained legal based on doctrinal-legal research.

The thesis concludes that the Eurasian Union has a relatively distinct theoretical background compared to other regional organisations. Thus, instead of illustrating the EAEU institutions' dysfunctionalities compared to EU institutional law, the thesis answers why the institutions of the EAEU have been shaped differently.

The thesis's primary claim is that the EAEU is a new *sui generis* case for comparative international law predominantly based on Russian approaches to international law. Therefore, it is another self-contained legal order and has the capability to consolidate post-soviet Eurasian states around Russia and its illiberal understanding of international law.

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List of abbreviation

ASEAN- Association of Southeast Asian Nations

CC- Constitutional Court

CIS- Commonwealth of Independent States

CoE- Council of Europe

CSTO - Common Security Treaty Organisation

EAEU- Eurasian Economic Union

EU- European Union

ECJ- European Court of Justice

ECtHR- European Court of Human Rights

ECSC- European Coal and Steal Community

EurAsEs- Eurasian Economic Community

EEC- Eurasian Economic Commission

GATT- General Agreement on Tariffs and Trade

GCC- Gulf Cooperation Council

Mercosur- Southern Common Market

NAFTA- North American Free Trade Agreement

RA - Republic of Armenia

RB-Republic of Belarus

RF- Russian Federation

SACU- Southern African Customs Union

SDO - Sahmanadrakan Datarani Voroshum (Decision of Constitutional Court)

TEU- Treaty on the European Union

TFEU- Treaty on Functioning of the European Union

TEAEU- Treaty on the Eurasian Economic Union

TEE - Treaty on establishing the European Economic Community

USSR -Union of Soviet Socialist Republics

WTO- World Trade Organisation

Moscow, cities of Petrov, and Konstantinov,
Cherished metropolises of the Russian Tsardom,
But where is the border, and where is the limit?
To the north, east, south or the west…?

Tyutchev, F. Rus'kaya geographia, 1848

Introduction

When in 1951, the European integration process launched, the reference points for legal and political scholars to observe the new formation were the history of Europe, the founding treaty of the European Coal and Steel Community [hereafter ECSC], the Schumann declaration, and the political speeches of public figures of that time. In short, the point of departure for a legal analysis was a newly formed Community, free from any comparison with other types of regional organisations. Even if some scholars claimed that the Common Market idea is not an entirely new phenomenon, frequently referring to the German Customs Union, the *Zollverein* (Vernon, 1953; 186; Gombos, 1960; 134), the European Union [hereafter EU] has been still perceived as a "self-contained regime" dissimilar to other international legal arrangements (Phelan, 2012; 373-374). That was one of the motives to conceptualise European integration as a *sui generis* case of international law.

Moreover, when the Soviet Union [hereafter USSR] came into existence in the third decade of the 20th century, it has forged a relatively distant posture towards international law. It was distinct enough to construct its own Soviet approaches to international law, challenging the Western idea of the universality of international law. The dissolution of the USSR in 1991 was a political shock, and the Soviet institutions have disappeared. However, the continuity of the Soviet legacy in conceptualising the Russian and probably post-Soviet Eurasian approaches to international law remained a

systematising development. Oppositely, the dissolution also brought new ideas of democracy and constitutionalism.

The reorganisation of post-Soviet Eurasia was burdensome, especially when combining western values with post-Soviet approaches to international law. Under this paradoxical combination, a new phenomenon came to substantiate the USSR, the Eurasian integration, introduced in 1994 by Kazakhstani president N. Nazarbayev (MSU, 2019).

Surprisingly, when the Eurasian integration finally came to the operative phase and the Eurasian Economic Union [hereafter EAEU] was formed in 2015, for many scholars, the reference point to grasp the new regional organisation was the EU law and concepts framed by European integration. The conceptions of supranationality, the transfer of competencies, limited sovereignty, and supranational adjudication are phenomena that have been shaped in the European milieu. Although their employment in observing the post-Soviet Eurasian integration is veritably worthy, such application would mean that the content of these concepts shaped in European integration acquires universal vocation, which is at least academically debatable. They incontestably are concepts that shape the EU law but not necessarily the post-Soviet Eurasianism.

When President of Russian Federation, Vladimir Putin suggested "a powerful supranational association" (Putin, 2011), it does not necessarily mean that he had the same understanding of supranationality as it is in the EU law. Likewise, when Kazakhstani president N. Nazarbayev highlighted the need to relocate EAEU supranational bodies to Kazakhstan (Nazarbayev, 2015), it does not *ipso facto* signify that he had a European idea of supranational institutionalism. Eventually, which Eurasian institutions are supranational?

When European integration has been established, the purpose was to constrain German imperialism in Europe, and the supranational structures were the most efficient technique (Simon & William**,** 2013; 1387-1388). Is it the case for the Eurasian supranationality as well? Does it come to constrain Russia's great powerness? Unhesitatingly, the answers are negative. So why should Russia restrict itself through supranational structures? Furthermore, why supranationalism is necessary for Eurasian integration at all?

These questions motivated me to think distinctively when assessing the Eurasian legal order. Thus, the academic relevance of this research is the foundation of a conceptual framework, particularly for Eurasian integration. Although this thesis has borrowed some concepts from the EU law, it remains in theoretical boundaries that post-Soviet Eurasian integration should be treated dissimilarly. The purpose of this thesis is to develop the first insights into the theoretical distinctiveness of Eurasian integration. Hence, this thesis opens new areas for legal scholars to rethink post-Soviet Eurasian integration.

Consequently, the aim is to describe the legal and political nature of the EAEU through the conceptual frameworks created in this research. The hypothesis is proved through merely legal doctrinal analysis. However, this is interdisciplinary research, also compressing history and politics. The tripartite combination allows having a multidimensional description of the Eurasian legal order. Accordingly, this research contributes not only to comparative international law but also comparative regionalism, generally. Nevertheless, I do not want to reject the universality of international law since I believe that universalism is the end when regionalism is simply a process.

Theoretical foundations, gaps, research questions

This research aims to locate the Eurasian Economic Union into the comparative international law framework through interdisciplinary legal analysis. The profound regionalisation processes in different parts of the world further reinforce David Kennedy's claim that international law is "different in different places" (Kennedy, 1999; 17). These differences are the backbone of comparative international law that seeks to "identify, analyse, and explain similarities and differences in how actors in different legal systems understand, interpret, apply and approach international law" (Roberts et al., 2018; 6). Kennedy was also correct in making the distinction according to "places" rather than "states" as international law can be perceived differently not only by

different states but also, particularly for this research, by regional legal orders. These regional systems, similar to States, can be classified sometimes as liberal or illiberal, Western or non-Western, democratic or authoritarian, and the nonidentical nature of the actors is the formula of the research viability of the comparative international law (Roberts et al., 2018; 16).

The EAEU, as a regional organisation, is a target case for comparative international law. In reality, although there is significant literature on comparative regional integration (Mattli, 1999; Börzel & van Hüllen, 2015; Brennan & Murray, 2015; Börzel & Risse, 2016), there is significantly less legal analysis on comparative international law, targeting the regional legal orders, especially outside the Western world. Instead, the legal scholarship significantly contributed to the research of interrelation between international and EU law (Koskenniemi, 1997; Dickson & Eleftheriadis, 2012; Kochenov, & Amtenbrink, 2013), with substantially less attention to the legal and political nature of other regional legal orders (exceptions are Berry, 2014; Filho, Lixinski & Giupponi, 2010; Desierto & Cohen, 2020).

Actually, regional organisations are capable of reshaping international law to the degree that it loses its universalistic nature (Chalmers, 2019; 165). However, the ambiguity of this claim is that regionalism as a challenge to the universality of international law has different faces. It can be perceived as a different approach to international law, a distinct international law-making technique, or as an illustration of exceptionalism from universal international law (ILC, 2006; 102-108). Then under the layers of comparative international law, it is not ungrounded to esteem that illiberal or authoritarian regional organisations are apt to adjust an atypical approach to international law through a unique technique of international law-making, challenging the universality of international law as an exception.

Under these theoretical lenses, post-Soviet Eurasia is a *locus classicus*. Notably, the EAEU as a regional legal order is largely under-researched by legal scholars from a comparative international law perspective. There are two reasons for that. The first is merely technical. The EAEU formed a couple of years ago, and there is still less research material available, and these are mainly in Russian, which triggers linguistic

difficulties for non-Russian speakers. Secondly, my attitude is that the Eurasian integration is regarded much from political and international relations perspective rather than as a regional legal order.

The Western scholarship is particularly apathetic to determine how the Eurasian Economic Union has been constructed as a legal order. Zhenis Kembayev's book, which reveals regionalisation processes in post-Soviet Eurasia from a legal and political standpoint, is an exception in this subject (Kembayev, 2009). In fact, this thesis tries to contribute to the same subject, however considering the recent notable developments and targeting the most institutionalised regional organisation in post-Soviet space. This research continues observing the post-Soviet space, also incorporating historical and political aspects. However, the primary attention is given to the EAEU and its legal nature as a regional order.

Recently, Roman Petrov, Peter Van Elsuwege, in their book on "Post-Soviet Constitutions and Challenges of Regional Integration," highlighted points that distinctively describe the Eurasian Economic Union (Petrov & Van Elsuwege, 2017). Specifically, they argue that the EAEU, contrary to the EU, is a regional organisation that promotes authoritarianism and is a structure to legitimise regionally what domestically has been established in the Member States (*ibid*; 28). At the same time, considering the legal and political dysfunctionalities of the EAEU, they doubt that Russian-Eurasian integration has a destiny (*ibid*; 38-40). Furthermore, through the supranationalism v. intergovernmentalism dichotomy, the book represents how sovereignty as a concept enshrined in the Eurasian integration and to what extent these concepts influence the decision-making processes and competencies of the EAEU bodies (*ibid*; 48-68). Finally, the book systematically deconstructs how the EAEU norms relate to constitutional legal orders of the Member States (Petrov & van Elsuwege, 2017, part 2). Nevertheless, unlike this observation, this thesis goes beyond the domestic constitutional aspect of the Eurasian integration, targeting mainly international legal arrangements of the EAEU based on the historical legitimation of the concepts that shape the Eurasian legal order.

In Russian legal scholarship, there are antagonistic opinions between two groups of

scholars. The first group contends that the EAEU should be appraised through traditional, classical concepts of international law, and from this turn, the EAEU, under Vienna Convention on the Law of Treaties and WTO law, can be classified as an international organisation without any supranational specificity (Anufrieva, 2016; Bekyashev, 2014). The next group is rather enthusiastic when it comes to the nature of the EAEU. They claim that the EAEU possesses features that utterly distinguish it from traditional international organisations, attaching supranational character to the Union (Gavrilov & Danshov, 2019; Kapustin, 2015; 61). Even though both perceptions generally describe the EAEU's institutional aspects, they have certain shortcomings. It is partially because scholars perform their analysis with direct comparisons with the EU law and identify either differences or commonalities between the EU and EAEU, which are, in some respect, artificial and cannot describe the legal nature of the EAEU according to its own conceptual foundations.

Hence, these issues form the purpose of this thesis to fill the gap. This research aims to construct a tailored conceptual framework to analyse the EAEU through historical, legal, and political explication. Through this legal conceptual underpinning, the objective is to demonstrate that the EAEU is another *sui generis* case of international (regional) legal integration. However, the claim is not based primarily on the accounts, that similar to the EU; the EAEU is another "self-contained regime" but foremost that under the layers of comparative international law, the legal civilisational background of the Eurasian integration functions differently.

Further, the thesis aims to illustrate that some of the concepts of international law are differently evolved in post-Soviet Eurasia, getting civilisationally diverse interpretation both by States and institutions of Eurasian regional organisations (particularly EAEU). In this turn, Mälksoo's book on "Russian approaches to International law" is a baseline for this research. His illustrations on the concepts of sovereignty, subjects of international law, and generally Russia's illiberal approaches to international law (Mälksoo, 2015) are the theoretical foundations for this thesis. In fact, from now on, I would like to inform the reader that while making assumptions, I consider that especially Russian approaches to international law and Eurasian integration are

substantial than other post-Soviet countries' attitudes towards these topics. Looking at the economic weight, political structure, and bilateral relationship between Russia and the remaining EAEU countries, it is evident that Russia is a *primus inter pares*.

Politically, the thesis shares Obydenkova's and Libman's conceptualisation of authoritarian regionalism, which seeks to "understand the effects of authoritarian regimes of the Member States on the functioning and outcomes of the regional organisations they create" (Obydenkova & Libman, 2019; 36). However, this research further examines the supranational aspect of post-Soviet Eurasian integration, especially from the legal accentuation. In fact, I assess the political aspect to the degree which allows me to demonstrate the exceptionalism of Eurasian integration. In this turn, I do agree that international law is shaped differently in different places because states and regional organisations "have different domestic policy preferences and different institutions, shaped by their own historical circumstances" (Roberts et al., 2018; 79).

Regarding the comparative aspects, the thesis shares the argument that the theoretical background of the European integration is insufficient to describe other formations outside the European ideological space (Acharya, 2012), especially when the EAEU is concerned. At the same time, the claim that other regional organisations, such as NAFTA, Mercosur, ASEAN, GCC, and SACU are more adequate frameworks for point of reference for comparison with the EAEU (Vinokurov, 2017; 55), is rejected too. The comparative aspect will be dysfunctional until the particularly tailored conceptual frameworks for post-Soviet Eurasian integration have not been fully observed. Otherwise, scholars will be in a vicious circle of dissensus over the application and interpretation of concepts that have been shaped through Western approaches to international law, particularly for *jus publicum Europaeum* and the EU law.

Considering all these challenges, the academic objective of this research is to assess the legal and political nature of the Eurasian integration. In this respect, the Eurasian Economic Union is considered a separate legal order that interrelates with domestic legal systems and international law. Meanwhile, I preferred to put legal and political nature on an equal basis since, unlike pure legal doctrinal research, more interest is shifted toward the political influences of historical legitimation of legal concepts. The

place and interrelation of this legal order with domestic legal systems is the central problem that this research seeks to illustrate. Instead of concentrating on particular legal concepts, this research tries to analytically describe a legal system, the exact way it functions, and how the norms of this order interrelate with domestic and international laws. Thus, from one respect, it politically and legally assesses the institutional evolution of the EAEU. From another perspective, it demonstrates the place of the EAEU norms in the domestic legal systems.

Based on these objectives, the overarching research question of this thesis is;

What is the legal and political nature of the Eurasian Economic Union in the context of international law?

Hence, in order to pragmatically unriddle the overarching research question, two interrelated sub-questions are analysed;

1) To what extent has it managed to create advanced 'supranational' elements similar to the EU, enabling a norm production?

2) Does the EAEU have the capabilities to produce new (regional) norms and standards of international law by reason of its activities?

Methodology, hypothesis, structure

Methodologically, this is interdisciplinary legal research. As far as the problem of this thesis is to describe the legal nature of regional legal order, a narrow doctrinal legal research would be too imperfect methodologically to assess such a multidimensional question, while the interdisciplinary legal research evidently fills this gap (Siems, 2009; 6-7). Additionally, through interdisciplinary methodology, the answers to the research question would be more comprehensive (*ibid*; 9).

The research begins with a historical analysis of Eurasian integration. Instead of describing the historical evolution of the Eurasian idea, it concentrates explicitly on the institutional formation and legal reasonings of early Eurasianist. Two prominent

Eurasianists, P.N. Savitskii, and N.N Alekseev will be mainly observed. The academic work of Savitskii is exceptionally fundamental inasmuch as he collected, combined, and synthesised the deliberations of early Eurasianists in his work of "*V Bor'be Za Evrazeystvo.*" N.N Alekseev's reasonings are especially exceptional for this research since he was the leading legal theoretician who described the Eurasian idea from a legal standpoint. Once the main characteristics of the Eurasian integration are found in the works of these scholars, the thesis describes how these concepts evolved in Soviet and post-Soviet Eurasia.

The starting point of the historical analysis is between 1920 and 1930 when the idea of Russian-Eurasianism emerged (Sobolev, 2018). This is some sort of historical analysis of law, which will help to illustrate "the emergence of legal practices and their legitimation" (Dubber, 1998; 159) in post-Soviet Eurasia. The historical analysis of supranationality as a legal and political concept then complements with social science analysis to crystallise the different features of the Eurasian integration. For this purpose, semi-structured interviews are carried out with two groups of people. First, to highlight the divergent nature of Russian-Eurasian supranationality, interviews are conducted with Professors V. Morozov and A. Makarychev from the University of Tartu. As experts on the Russian foreign policy, they have proved existing literature on the foreign policy conduct of Russia. Secondly, their experience of working in the Russian Federation provides additional validity and reliability to their answers. The second group of people is former *haut fonctionnaires* from the EU Commission. For this purpose, an interview has been conducted with the Honorary Director-General of DG Near Dr. Pierre Mirel. The interview with him seeks to demonstrate how European supranationality functions in reality compared with the Russian-Eurasian approach.

Combined with the historical analysis of the Eurasian supranationality, thematic content analysis is conducted to conceptualise a new concept of authoritarian supranationalism. However, even if I deploy these method to strengthen my research further, I am still restricted by a legal formalistic aspect of this research. In fact, instead of interviews, other methods, such as content analysis, could be performed. However, considering the recent political developments, interviews have been the most suitable method. Thus, the

use of interviews as part of this research should be accounted as merely a complement to my legal research. That is why it would be dysfunctional to regard the deployment of the method from a purely social science perspective rather than considering it as a part of legal research that further straighten the conclusions.

The rest of the thesis is based on legal doctrinal research methodology, including the assessment of both legal literature and empirical materials, such as case law and legislation of the EAEU bodies and the Member States. To address two sub-questions of the research, a wide range of legal material is used. Primary, observation includes the assessment of the EAEU law, which includes the Treaty on the Eurasian Economic Union and the decisions of EAEU bodies that form the law of the Union. Particular attention is given to the case law of the Eurasian Court and the EAEU Member States' domestic high courts. Alongside the EAEU law, the domestic legislation of the EAEU Member States is observed in order to illustrate the interrelation between EAEU and domestic legal orders. The primary sources are combined with secondary ones, including scholarly articles and commentaries, interpreting the Eurasian integration.

Since the academic objective of this research is to locate the EAEU into the comparative international law framework, the comparative legal analysis methods are also utilised. The comparison is made between the European and Eurasian legal reasonings over many questions, including the institutional balance at regional organisations, the democratisation of institutional law within regional organisations, and functional differences that both Unions have. For these purposes, the case law of the European Court of Justice [hereafter ECJ] and other sources of EU law are observed and compared with the EAEU legal arrangements. Indeed, the comparative legal analysis will help to deconstruct the EAEU as a separate legal order (Van Hoecke**,** 2015; 2).

Overall, this interdisciplinary legal research can be regarded as a two-tier observation where I firstly develop a conceptual framework via historical-legal and political methods and later testify the concept through doctrinal and comparative legal research.

My hypothesis is that the EAEU functions through authoritarian supranationalism rather than classical concepts of supranationality shaped in the Western hemisphere. Its

institutional framework and capability of international [regional] norms production make the EAEU another *sui generis* case under comparative international law.

The thesis is composed of three chapters, which, through complementing each other, seek to identify the legal and political nature of the Eurasian regional legal order.

The first chapter constructs the conceptual framework for Eurasian integration. Then, by introducing the theoretical foundations of European integration, it strives to disconnect the Eurasian integration from these theoretical frameworks. For that purpose, the chapter firstly illustrates the historical characteristics of Eurasian integration from 1920 to today, and using the available data, it demonstrates the disparate characteristics of Eurasian integration. The chapter is finalised with a newly established concept, which is denominated authoritarian supranationalism.

The second chapter represents the EAEU institutional frameworks under the conceptual architecture of authoritarian supranationalism. The chapter begins with a separate legal analysis of each EAEU institution, and their competencies. The chapter devotes particular attention to the judicial body of the Union, considering it as a major point to illustrate the disparate nature of the Eurasian legal order. This includes observation of legal constraints of the EAEU Court and the role of judicial activism in the Court's performance.

The third chapter seeks to illustrate the interpretation and application of direct applicability of international norms by the EAEU Member States. Accordingly, it separately observes all the Member States' domestic legislation and case law to figure out if the EAEU norms are treated differently than other international legal acts. Finally, the chapter assesses how the EAEU Court grasps the direct applicability and direct effect of the EAEU norms. Through comparative case analysis, the particularities of the EAEU Court's reasonings are illustrated.

The research finalises with a conclusion on the legal nature of the EAEU as a separate legal order.

Chapter I . In search of the Eurasian supranational legal order

Scholars, in search of a particular type of legal order to study the correlation between supra-, inter-, trans-, and national laws in post-Soviet Eurasia, misleadingly include features from supranationalism, such as supranational law, imitating the EU law and institutions (Butler, Entin, Entina, Torkunova, 2020). From such a standpoint, it is not unexpected that scholars, while addressing the interrelation between national and supranational laws, pretend that the disagreements between the two legal systems occur during the transposition of supranational rules to the national legal system intending to substitute the domestic law by that of supranational (*ibid;* 12-13). Indeed, the claim has some practicality even for the EU law. Per contra, the inquiry at least is irrelevant from an ideological and technical perspective, as it should not trigger any practical need to discuss the replacement of national legal rule by that of supranational one as the latter is based on the long-shaped concept of "pooling sovereignty" (Keohane, 2002; 748). From this perspective, it is a requisite to observe how Russian scholars position supranationalism in the Eurasian integration as a legal and political concept to compare their viewpoints with the existing conceptualisations of supranational law that has been shaped during the process of European integration.

Some Russian scholars argue that the EAEU should modify its legal politics based on the EU's experience of supranational governance and law, providing a pivotal role to the EAEU Court, similar to the ECJ, to develop a solid legal background for the establishment of supranational law (Mal'ko & Elistratova, 2018). Others even go further by claiming that the EAEU has already systematised EU-like supranational mechanisms (Strezhneva, 2016; 9). Some other scholars insist that the EAEU does not possess supranational bodies, depriving the Union capability to produce supranational norms (Khurmatullina, Malyi, 2016). Interestingly, some scholars ascertain integration and potential disintegration processes in the EU and EAEU through the same conceptual frameworks, utilising the concepts of sovereignty and national self-determination

(Frolova, 2018; 52). Nevertheless, all these scholars remain at the theoretical boundaries of EU law's conceptualisation of supranationality and supranational law.

Above mentioned points do not validate that there were no Russian scholars who have criticised the institutional disorders of the EAEU. Kozyrev and Iksanov, for example, thoroughly explicate the pitfalls of the EAEU Court (as well as its predecessor, Court of Eurasian Economic Community) both from an institutional and procedural-formal perspective (Iksanov, Kosirev, 2017). Some other scholars even go further and challenge the foundations of the EAEU as a fully formed supranational organisation, rightfully confirming that the EAEU Treaty law does not contain any direct link to the term of supranational law or alike institution [expect Article 103] and that ideologically the EAEU is still a project rather than a reality (Tenetko, 2015). However, these approaches are also limited to the identical legal and political accounts that perceives supranational law and governance from the European scholarship's perspective.

Admittedly, for comprehension of the law-making and institutional evolution of the EAEU, a legal-historical analysis is a must, and some scholars also elaborate on the historical-legal development of Eurasian integration (Staradubtsev, 2015). Nonetheless, they also avoid appraising the supranational features of current EAEU institutions from a theoretical background that is dissimilar from European integration, foregrounding the *sui generis* nature of post-Soviet Eurasian history.

Furthermore, some scholarly work is dedicated to the query of institutional distinctness of the EU and EAEU, unveiling notably the functional variations between the supranational judiciaries of both regional organisations (Kovler, 2019; 30-33). However, there are two pitfalls for such an analysis. First, the demonstration of the Court's role in Eurasian integration is conducted without substantial connections to inter-institutional linkages of the Union. Second, the author apprehends the legal evolution of the EAEU's judiciary within the expertise of the EU's legal achievements (*ibid;* 157).

On the contrary, some Russian scholars affirm that the EAEU, legally and institutionally, is nonidentical to European integration. They particularly claim that the conditions of formation of both Unions are distinctive, and the principles that form the legal system are remarkably different from one another (Entin, 2018; 18, 112).

However, their argumentation also omits certain vital elements. Remarkably, their inquiry is far from being interdisciplinary, which leads the analysis to be an elaboration of treaty provisions without any historical and legal-political components. Therefore, instead of answering what are the functional differences of the EAEU's institutional milieu, they proceed with a descriptive analysis.

Apropos of operational peculiarities, some commentaries presume that the EAEU functions in a democratic milieu, which sometimes leads to conclusions that are, at least, academically speaking somewhat debatable. For instance, scholars claim that in case the EAEU alters its decisions making procedure from a consensual to a simple or qualified majority, copycatting the legal foundations of the EU law, the nature of decision making will become further autocratic in the EAEU, permitting Russia to absorb the power (Entin, 2018; 224-225). The pronounced assumption is tacit approval of the authoritarian nature of the Union, inasmuch as it is not the decision-making method foremost but the institutional balance that constrain power concentration in multilateral fora.

Whereas all these deliberations of Russian and other scholars cannot be entirely denied, two frequent patterns are observable around most of these scholars. Primary, it is the marginal assessment of the concept of supranationality. Next is the artificial incorporation of concepts that have been persistently shaped by European scholarship and solely for Europe [EU]. Accordingly, this chapter strives to define supranationality from a Eurasian perspective. However, this is not the finality of this thesis. The chapter only generates a conceptual background to further research questions illustrated above.

This chapter is represented in the following order. First, supranationality as a notion of European integration will be explained from the prospect of three pre-eminent schools; neo-functionalism, institutionalism, [liberal] intergovernmentalism. The principal components of supranational governance and law will be revealed from these theories, considering European integration's historical and legal particularities. Next, the legal-historical analysis of Eurasian integration will be portrayed in order to grasp the evolution of legal concepts that have been shaped in the Eurasian "steppe." Finally, considering all the historical-legal and political particularities of the Eurasian

integration, a new conceptual framework is constructed to examine the EAEU institutionally and substantially.

1.1 European theories on supranational institutions and law

As illustrated above, the subsequent part will scrutinise European theories on supranationality, including the neo-functionalism turn, institutionalist approaches, and liberal intergovernmental deliberation of supranational institutions and laws, keeping in mind that this observation will essentially focus on peculiarities of decisional supranationalism rather than normative. The purpose of illustrating these theories is to conclude that supranationalism functions differently in Eurasian space, and European conceptualisation cannot be used to describe the EAEU thoroughly. These theories, despite being substantially desperate, share the same methodological path. Regardless of having substantially different political reasoning, all these approaches predicate their argumentation on two premises; history and legal structure. Without hesitation, they support their analysis from divergent perspectives, but the backbone of their claims is predominantly based on the historical past of European integration and EU law if the political component is seconded for a purpose. The same methodological technique will later be deployed for constructing supranationality from a Eurasian perspective, challenging, to some degree, the universal percipience of European supranationalism. Having both normative and decisional vocation, this thesis centres on supranationalism as a decision-making "by which policies and measures are, in the first place, initiated, debated and formulated, then promulgated, and finally executed" (Leal-Arcas, 2007; 98). Consequently, the preeminent academic interest will be devoted to the institutions that participate in the law-making procedure. In this regard, the grand theories will be represented at a definitional level, combining the standard methodological and conceptual features of all these theories, which are vital to developing the conceptual

background for the Eurasian integration at the later stage. Thus, the objective of the illustration is not to fully describe all the features of these theories of regional integration. Instead, the purpose is to demonstrate that none of these theories can generally and efficiently be applied to Eurasian integration.

1.1.1 Neofunctionalism

The founding father of the neofunctionalism theory of European integration is E. Haas. Another prominent integration theories K. Deutsch claims that behind successful integration is social mobilisation, and this process is more profoundly linked to "history" and "time" rather than "geography" and "location" (Deutsch, 1953; 174). On the other hand, neofunctionalists insist that the development of supranational integration is a result of growing interdependence (Hooghe & Marks, 2019; 1114). From a legal point of view, Haas's conceptualisation of supranational integration attains more credibility as the latter claims that the common thread of integration passes on the question of "who makes, who interprets, and who implements the rules" (Haas, 2004; xxi). Indeed, this demonstrates that early observers of the European integration described the concept of supranationality considering preliminary the formal-legal process of law-making.

Haas's analysis then deconstructs the legal structure of High Authority in the Treaty, concluding that "supranationality in structural terms means the existence of governmental authorities closer to the archetype of federation than any past international organisation, but not yet identical with it" (*ibid;* 59). However, what is strategic for the purpose of this analysis is that Haas conceptualises supranationality far from Kantian international legal order (Haas, 2004; xiv), but it still functions in a capitalist-liberal-democratic milieu (*ibid*; 525-527). Such an approach was later affirmed by the EU in its treaty provisions and Copenhagen criteria (TEU, 1992; art. 2, 49).

For legal scholars, Haas' theory of neofunctionalism was crucial to assess the role of the ECJ as a supranational adjudication (Mattli & Slaughter, 1995), empowering the neofunctionalist technocratic community building over states' preferences (Mattli & Slaughter, 1998; 181). However, even if Haas' neofunctionalism theory remains an "exegesis" of the technocratic constitution of European integration, undermining new realities of European constitutional order (Moravcsik, 2005; 363-364), it still functions within the theoretical boundaries of European democratic-liberal approaches.

Even if neofunctionalism did not manage to define European integration legally, its technocratic analysis of decision-making demonstrates the independence of supranational institutions. Adding the deployment of democratic principle, their reasoning further proves that neofunctionalism operates through a particular, Western approach to international law.

1.1.2 [Liberal] intergovernmentalism

Early critiques to the neo-functionalism understanding of European integration include S. Hoffman's concepts on intergovernmentalism. His argument was methodologically built on historical premises of the pre-European community stage. He claims that the power relations were historically transformed into mutually beneficial cooperation of nation-states to eliminate the rule of force (Hoffmann, 1966; 865). He insists that the nation-states, constructing their interests, remain the central units of the international systems, and bargaining between states is the principal method of rule-making (Hoffmann, 1966; 863; Hoffmann, 1982; 35).

In reality, such a configuration also targets the liberal-democratic milieu as a spatial component of regional integration. Meanwhile, as a true intergovernmentalist, Hoffmann remained under the Westphalian traditional understanding of the international legal system composed of nation-states, solely adding new contours to it (Hoffmann, 1966; 911).

In classifying the North Atlantic space as a unit of the partial international system, he denominated North Atlantic as a geographical area of domination of white-skin people and developed countries (Hoffmann, 1963; 523-524), which is a crucial point for his understanding of intergovernmental cooperation. The racial feature is identical for contemporary European integration. It is a geographical area of mostly white-skin populations and consists of economically strong states. In this regard, the North Atlantic and European spaces are certainly comparable and identical. Nevertheless, these peculiar characteristics are radically different in post-Soviet Eurasia; a multicultural, multi-racial, and economically divergent space.

In later years, although Hoffmann continued to accentuate the role of statesman, preservation of nationalism, and national sovereignty for the intergovernmental cooperation of the European communities, the adoption of the European Commission's 1988 White paper on Single European Market induced Hoffmann to more substantially consider the supranational role of European institutions (Hoffmann, 1989). This turn in European affairs also opened new horizons for Hoffmann's student A. Moravcsik to construct the new liberal intergovernmentalism theory.

Liberal intergovernmentalism represents intergovernmental bargaining through the lens of economic interdependence and rejects *sui generis* theories for European integration, highlighting neo-functionalism's dysfunctionality as a general theory of integration (Moravcsik, 1993; 477-478). The liberal intergovernmental approach has strong ties with intergovernmental institutionalists' claim of nation states' bargaining and prevalence of national preferences, but its distinctive feature is that such preferences are shaped in a national-liberal milieu (*ibid*; 480). Hence, state preferences and inter-state bargaining shape the emergence of supranational (regional) institutions in order to cut the transaction cost with a smooth decision-making mechanism (*ibid;* 507-508, Moravcsik & Schimmelfennig, 2009; 69). However, some niceties are fundamental to articulate. First, the formation of national preferences at the European level is shaped in democratic-capitalist states [at least until the 1990s and 2004 enlargements]. Secondly, the bargaining between states is conducted, considering the asymmetrical interdependence, between liberal-democratic states (at least until 1989), as both

conditions are legally required for membership. Finally, even if liberal intergovernmentalism undermines so-called “daily” decision-making, it still concentrates on the formal use of veto power, which is a legal matter rather than purely political consideration.

1.1.3 Institutionalism

In these harsh contradictions between [liberal] intergovernmentalism and supranationalism, the institutionalists provide a relatively argumentative middle ground. Institutionalists confirm that the European supranational integration functions through the logic of institutionalisation, which “is the process by which rules are created, applied, and interpreted by those who live under them" (Sweet & Sandholdzt, 1997; 310). Consequently, the observation of treaty provisions about the supranational law-making, interpretation procedures, and institutional construction undertakes the substantive aspects of institutionalists’ analysis. Their observations are even more far-reaching. They claim that alongside intergovernmental institutions, transnational affairs further straightens supranational structures, which through community norms and case law of the ECJ further extend the integration processes (*ibid*; 299). Nevertheless, it is consequential for this work that institutionalists’ claim that [liberal] intergovernmentalism is not a general theory of integration but a theory solely for European integration (*ibid*; 314).

My claim is that even at the definitional level, neither of these grand theories can be classified as a global theory of regional integration, yet their methodological and analytical approach can be very utile. Concretely, these theories cannot describe entirely institutional and legal particularities of other regional integration processes out of Europe, especially in post-Soviet Eurasia.

1.1.4 Common features of the supranationality

Although all these grand theories on European integration highlight varied features as a baseline for integration, they share similar methodological, conceptual, and analytical crossroads. First, all these theories construct their argumentation via historical developments in Europe both in the pre-and after-integration phases. They explicitly claim that cooperation schemes at the European level have some historical ground and historical perspective shapes the institutional and legal arrangements. Second, all the theories consider supranational law-making from a legal-formalistic perspective. This is particularly observable around institutionalists and neofunctionalists. Third, though intergovernmentalism undermines the daily law-making process, for which they have been criticised, they also provide legal argumentation to intergovernmental decision-making on critical issues, highlighting the role of veto power and unanimity (Moravcsik, 1993).

Fourth, considering the historical past and the emergence of the EU law, all the scholars consider the integration process from a democratic-liberal standpoint, which ultimately shapes the overall law-making process. In this democratic-liberal cooperation milieu, they nicely illustrate the principles of equality, self-determination, and asymmetrical interdependence. However, they never go further to contend with the ultimate role of authoritarian (I highlight authoritarian, not undemocratic) regimes as a motor of regional integration. Subsequently, supranational law-making and supranational institutionalisation in an organisation of autocratic domination are undermined. Following this particular ideological standpoint, they analyse concepts from a Eurocentric approach to international law, including observations over sovereignty, equality of states, and generally, supranational law-making and adjudication.

Considering all these common features, this thesis shares the academic approval that these theories' vocation to be classified as global is challenging. Indeed, all these theories can be a fundamental baseline for observation of regional organisations in different parts of the world, both from a methodological point of view and substantially.

However, the concepts elaborated by these theories cannot be artificially attached to other regional spaces, especially if these regions are predominantly nonidentical to European ideologies.

The claim is certainly applicable to the Eurasian integration, which has its own historical, legal, and institutional grounds for observation and foundation of a theoretical spot. That is why the following sections will observe the Eurasian integration from a historical and legal perspective to construct a separate conceptual approach for the supranational law-making and supranational institution building at the EAEU.

1.2 Historical-legal analysis of Eurasian Integration

Since at a definitional and characteristical level, the nature of supranational institutions and law-making is described, the remaining part of the chapter determines the Eurasian integration's nonidentical peculiarities in order to construct the concept of supranationality specifically for the EAEU. For this inquiry, foremost, the historical-legal foundations of the Eurasian "integration" will be illustrated, subsuming pre-Soviet times, the Soviet era, and most importantly post-Soviet period. The illustrations are mainly historical and political representation of legal concepts. From historical discourse, the core concepts of “supranational” law-making and institution-building are explored. This approach essentially includes an ideological atmosphere where supranational decision-making is constructed through the concepts of sovereignty, independence v. interdependence, and equality of states. As part of the law-making procedure, the political foundations are illustrated, particularly for this theoretical observation. Next, the legal analysis of current scholarly work is conducted to assess how supranational institutions have been evolved in the current phase of Eurasian integration. This ultimately leads us to the next chapter, which assesses the Eurasian legal system based on the concept of authoritarian supranationalism.

1.2.1 Legal-historical construction of supranationality in post-Soviet Eurasia

Supranationality (usually referred to in Russian as *nadnatsianal'nsost'* or *nadgosudarstvennost'*) is not an unprecedented concept for the proponents of early Eurasianists; a group of Russian intellectuals emerged in the Russian *emigré* community in the 1920s, highlighting the Asian influence over Russian history and culture (Lyuks, 2018; 4,7). Early Eurasianists already assisted a role to supranationality in developing the Eurasian idea. The concept emerged at the beginning of the 20th century with the evolution of the Eurasian idea, way ahead before European Communities come to apply the notion. Alekseev, contribute to this retention by asserting that;

> *[in Russian]*"Не "интернациональна" русская культура, но сверхнациональна и "соборна". Велика она тем, что сумела воспитать в себе истинно "вселенское" начало – сумела воспринять великие идеалы Востока и соединить с пониманием идеалов Запада" (Alekseev, 1927; 121).
>
> *[in English]* "The Russian culture is not international, but **supranational** and "*saborna.*"[1] It is great as it was able to nourish itself from "universal" origin, it was able to learn magnanimous ideals of the East and combine with the percipience of the ideals of the West."

More engaging is an extract in Savitsky's book back to 1931, he wrote;

> *[in Russian]* "Но совсем иное дело — факт распространения политической власти, колонизации и культуры "по степи", по громадным пространствам, лишенным резких географических рубежей, вследствие чего и границы между национально-культурными, как и между этническими, типами становятся менее жесткими, и создается возможность некоторой "***сверхнациональной***", общей всему данному "континенту", и все-таки не просто общечеловеческой, а именно ***"континентальной"***

[1] Alekseev probably refer to purity of the Russian culture.

общероссийской или, если угодно, **"евразийской"** культуры" (Savitsky, 1931; 23).

[in English] It is an entirely different matter of dissemination of political power, colonisation in the "steppe."[2] It is a culture of vast territories that are deprived of geographical boundaries. As a result, both borders of national cultures and ethnic groups become less "rigid," and a possibility arises for a "**supranational", a common "continental", in all cases not directly universal, but exactly continental, all-Russian and if you want "Eurasian" culture."**

The terms "*sverkhnatsianal'nost*' " and "*nadnatsional'nost'* " semantically reflect the same meaning as both contribute to the administration of various jurisdictions under one common feature, be it culture, history, institutions, or values. Hence, the early Eurasian term "*sverkhnatsianal'nost'* " should trigger the same academic interest that "*nadnatsional'nost'* " triggers for the current Eurasian legal order. However, what interests us is the actual meaning of the Eurasian concept of "*sverkhnatsional'nost"*" [supranationality] and the characteristics that it contains.

First, such a supranational Eurasianism has a cultural dimension, which is represented as a unitary actor, rather than a union of different actors (which is the case for the EU). Secondly, this supranational Eurasianism is equal to Russian supranationality, which apparently means that the concept is attached to Russian space rather than to the culturally heterogenous Eurasian continent. Such an approach is, in fact, not surprising if acknowledging Eurasianist understanding of state and law. Under this background, N.N Alekseev, the founder of the Eurasian theory of law and state, plays a fundamental role in apprehending Eurasian conceptualisations on law and state-building. Alekseev (1879—1964) was a Russian *émigré*, a legal scholar, and a professor of law at the Moscow State University, Charles University in Prague, and in many European countries (Hrono, 2000). Alekseev rarely examined the legal relations between different Eurasian nations. He was more interested in unfolding the idea of how the Russian-Eurasian state would function under the Eurasian ideology (Romanovskaya, Krimov, 2010). His political thoughts explicated in "*Sovetsky federalism/ Evrazisky*

[2] It refers to the Russian [imperial] Steppe.

vremennik" (1927), "*Religia, pravo i nravstvennost*" (1930), "*Russkiy narod i gosudarstvo"* [edited by A. Dugin and D. Taratorin] (1998) significantly contributed to the subject. Confessedly, from a historical standpoint, present-day Eurasian integration differs from Alekseev's reasonings, but it is only if one assesses marginally, merely evaluating existing legal-normative foundations of Eurasian integration, a method that a lot of legal scholars find sufficient when conducting doctrinal research.

The aforementioned conceptualisation of supranationality shapes the Eurasian conceptualisation of the state. Alekseev, a prominent Eurasian legal scholar, classifying typologies of states, distinguishes four types; parish, land, kingdom, and state-world (Romanovskaya, Krimov, 2010; 32). In the type of state-world, Alekseev appreciates the position of the Russian-Eurasian state (*ibid*; 33), which included the territory of back then imperial Russia and the emerging Soviet Union. Later, the same territory as post-Soviet space should have been regarded as one of the possible terrains for Eurasian integration (Vinokurov, Libman, 2012; 12, 16-20). Aleeksev, describing the process of formation of the state-world, highlights the potency of a particular cultural type, the Eurasian one, which only could be organised under a supranational unitary principle (Romanovskaya, Krimov, 2010; 34). From an organisational level, this state-world should have been formed as a federation, where the adherent nations could have only cultural autonomy, deprived of independent state-building (Romanovskaya, Krimov, 2010; 51). Such federation has been classified as a "castle of nations," where every nation has a place according to its ability and cultural will (Savitsky, 1931; 42). Through these conceptual underpinnings, Eurasians come to be an alternative not only to communists but also to the liberal-democratic regimes. In more concrete terms, Eurasianists critique European representative democracy, instead suggesting the construction of national *ideocracy*[3] in the form of the Eurasian federation (Romanovskaya, Krimov, 2010; 43).

Under such unitary actorness, the content of the concept of sovereignty attached to the visionary Eurasian federation has major significance. For Eurasianist, people who are a

[3] According Oxford English Dictionary an *ideocracy* is the governance of a state according to the principles of a particular (political) ideology; a state or country governed in this way.

simple grouping of an electorate cannot be regarded as holders of sovereignty (*ibid*; 41). Instead, it belongs to supreme state bodies, which are considered as the possessor of actual sovereignty, whereas territorial regions of such Eurasian federation participate in the decision-making through these supreme state level, deprived of sovereign rights (Alekseev, 1998). Such a conceptualisation of sovereignty was in harsh contradiction with the Western concept of people's sovereignty because Eurasianists considered that "nations" are incapable of any political action. Thus, substitutes become a necessity to form a true non-anarchic, non-European but Eurasian organised and organic sovereignty (Alekseev, 1998; 75). What is important to highlight in this conceptualisations that Eurasianism is not based on the European idea of pooling sovereignty since territorial units of the fictional Eurasian federation were considered part of the Russian-Eurasian world.

What kind of norms can such supreme state sovereign bodies produce? Alekseev classifies two types of norms; the first group contains religious and moral norms while the second group encompasses so-called "technical rules" (Romanovskaya, Krimov, 2010; 55-56), which are rational norms to achieve certain results where appropriate (Alekseev, 1930; 35). The majority of such norms are included in normative acts that foremost have the goal to regulate "economic activities, production, construction, medicine, agricultural equipment," which Alekseev classifies as "economic" (Romanovskaya, Krimov, 2010; 56). He also put under such "technical" norms the ones that regulate "social order, administrative affairs, and conventional norms" (*ibid*).

Then, what kind of aim should such a unitary federative union achieve through these norms? Alekseev gives a definite answer to the objective of such federation and it is " to free people from the cruelties of the personal struggle for existence by creating the most developed material and technical base of life, organising the intensive production of necessary goods and establishing the most convenient system for distributing them to meet all the basic needs of citizens, creating an average level of a prosperous life and the final elimination of poverty (principle of material improvement of life)." (Aleeksev, 1998; 161). In 2015, after almost 70 years, article 4 of the TEAEU, forming the

objectives of the Eurasian Economic Union, stipulates; “the main objectives of the EAEU shall include: to create conditions for the stable economic development of the member States in order to improve the living standards of their people; the desire to create a common market for goods, services, capital and labor within the EAEU; comprehensive modernisation, cooperation and competitiveness of national economies within the global economy” (TEAEU, art. 4). These articulations demonstrate that the EAEU is not a sole result of pragmatic Eurasianism but goes beyond it. It is because the idea of supranational cooperation is not solely about economic interests, but it also demonstrated the role of individuals in such integration and vitally the position of State in the Eurasian steppe, questions that are treated thoroughly in the second and third chapters.

1.2.2 Soviet Union and supranationality

In Soviet international legal doctrine, the question of “supranationality” has been examined at a very marginal level, frequently utilising the term to observe the European Economic Communities (Kostenko, Lavronova, 1991). However, even in this marginal sense, Soviet legal scholars were almost sure that such a concept of supranationality, which ultimately means pooling sovereignty, does not exist (Kolosov, 1991; 8). They develop their arguments on the fact that sovereignty can be regarded in absolute terms, arguing that states via joining various international agreements, also get obligations toward other sovereigns, and that is the only application of the principle of primacy of international law over domestic norms (Kostenko, Lavronova, 1991; 52-53). When it comes to law-making procedures, Soviet international law scholars claim that there are no such supranational bodies, and illustrating empirically, they claim that the existence of the European Communities is simply a method of regulation of interstate relations (Kostenko, Lavronova, 1991; 50, 52). Thus, there is no possible way of sovereignty transfer to an international organisation. It is simply a *sui generis* form of

an international organisation, but still under the traditional understanding of international law (*ibid*; 47, 50). When it comes to the application of the concept to the USSR, it is even worthless to consider the latter as supranational, although some legal-institutional groundless claims exist that the USSR was some [different] sort of supranational union (Shapoval, 2018). Representing the USSR as a supranational union is quite misleading since the Soviet formula of a socialist nation is the "proletarian internationalism," and although preferences of states can be inferior to so-called "supranational" communist party interests, Soviet legal doctrine has always rejected Western concepts of sovereignty transfer (Von Mohrenschildt, 1973; 381). Instead, they saw the formation of socialist order through the routine of "coming together" (sblizhenie) and "merging" (sliianie) (*ibid*).

Thus, for the purposes of this analysis, the axis of interest is shifted to the concept of sovereignty that has been shaped under Soviet rule, which would later have a vital significance in post-Soviet Eurasian integration theory. The Soviet doctrine of sovereignty has been constructed on Marxist-Leninist thought of internationalisation, and although sharing factually similar grounds with the Western conceptualisation of sovereignty, it is still divergent if observed more deeply (Jones, 1990; 21). What is different from the Western concept of sovereignty is the Soviet's understanding of the concepts of "supremacy" and "independence" (*ibid*). Soviet Jurist Levin, referring to supremacy, emphasise that "the supremacy of the power of the state as the political organisation of the ruling class is the essence of sovereignty. . . In the bourgeois state the proclaimed form of "the sovereignty of the people" conceals class dictatorship of the bourgeoisie" (Chakste, 1949; 32). Thus, the Soviet understanding of sovereignty was anchored to "proletarian supremacy" and "independence from capitalism." Meanwhile, in some respect, the Soviet constitutional legal order developed a paradoxical situation when the USSR was regarded confederation in international legal reasoning and a federation from a domestic legal perspective (Aspaturian, 1960; 18). However, the typical attitude was that the USSR was a unitary actor but not a confederation of sovereign states.

Notwithstanding, what is crucial for the purposes of this work, is the coordination of the

sovereignty in intra-Soviet relations. Soviet legal scholarship left the determination of the concept of sovereignty to intra-Soviet federal law, and, although the constitution recognised all Soviet Republics as sovereigns, it constitutionally deprived essential state functions of its members that are an indivisible part of the essence of sovereignty (Chakste, 1949; 35). Hence, the Soviet Union leaning on the federal solution, pursued a policy of centralisation (Jones, 1990; 42-43), and through such policies, some Soviet legal scholars saw gradual elimination of factual inequalities for the formation of the World Soviet Republic (Alimov & Studenikin, 1933; 19). From this regard, Aspaturian's typology of "factual," "vassal," and "client" states particularly is helpful (Aspaturian, 1960; 25). This typology, according to Aspaturian, is constructed based on great power status and structurally is a "juridical fiction" (*ibid*). Did the status of Russia as great power disappear with the dissolution of the USSR? Or does Russia currently seek a great power status? The answers to these questions are clarified at the end of this chapter, but for now, Aspaturian's typology should be reviewed more scrupulously.

Denoting "factual" states, Aspaturian maintains that such states possess some formal functions but remain part of another state, without owning a separate legal system (Aspaturian, 1960; 29). Some of the Soviet Republics could be classified largely “factual,” but that was not the case for all the constituent republics of the Union. In fact, a common approach for all Soviet republics is hardly observable as each of the Soviet Republics had different international weights, and Asptarian’s remaining categorisations are the approval of this divergence. Aspaturian's next category is vassal states, which are so-called "puppet" or "satellite" states (Aspaturian, 1960; 29). Speaking about satellisation and subordinated relationship between a satellite and hegemonic power, Korowicz distinguishes between "legal-factual" and "factual-political" satellisation (Korowicz, 1961). The importance of this distinction is the external relations of satellite states with other independent nations (*ibid*). Thus, if a political satellite does not have any constraints to negotiate an agreement with any other state, in the case of legal-satellite, independent interaction with third states is legally impossible and can be regarded as "*acte peu amical* by the protecting Power" (*ibid*). If fictional and vassal states have some kind of legal nature, then the "client" state is a political denomination

since it possesses all the attributes of statehood according to international law but for indeterminate reasons direct its foreign policy according to the will of the "patron" state (Aspaturian, 1960; 29).

Summarising the debate over the concept of sovereignty in intra-Soviet relations, the constituting republics of the USSR were factually deprived of functions to exercise their full sovereignty. Their relations seem to be similar to the one between “factual” and “hegemonic” states, where every decision is made by a hegemonic one, and such competence is transferred constitutionally.

The major rupture in Eurasian space occurred after the dissolution of the Soviet Union. Fifteen former-Soviet states, via gaining independence, and rejoining the family of international affairs, engendered a new formula of the relationship between them and Russia. However, the new formula comes to clash with Russia’s conceptualisation of its zones of privileged interests (Cooley, 2007), which is rarely examined by legal scholars, although it characterises Russia-post-Soviet Eurasian states relations from a legal standpoint.

1.2.3 Current development of supranationality and sovereignty in post-Soviet Eurasia

The primary consequence of the Soviet Union’s dissolution was the emergence of fifteen independent, sovereign states on the territory of the former Soviet Union. Three Baltic Republics, from the beginning, have chosen the path of European integration, joining the EU in 2004. At the same time, they have claimed that they are not States born in 1990/1991 but States that were reestablished after the period of Soviet illegal annexation (Mälksoo, 2003). Meanwhile, the remaining newly formed states have established regional arrangements for deeper integration in post-Soviet Eurasia. As a result of the Minsk agreement in 1991, Alma Ata declaration in 1991, and Charter of CIS in 1993, the Commonwealth of Independent Staes has been fully formed, as of now uniting nine post-Soviet states; Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan,

Moldova, Russia, Tajikistan and Uzbekistan (*Soglashenie* SNG, 1991; The Alma-Ata Declaration, 1991; Charter of CIS, 1993). The objective of the formation of the CIS was the accomplishments of cooperation in economic, political, humanitarian, ecologic, and other spheres (Charter of CIS, 1993, art. 2). Concerning the supranational nature, the Charter directly stipulates that the CIS is neither a state nor a supranational union (Charter of CIS, 1993, art. 1). This is understandable for countries that were deprived of sovereign rights for more than 70 years. That is why the formation of CIS is sometimes recorded as a civilised divorce rather than an integration (Van der Togt et al., 2015; 12).

This is not an unanticipated turn, as almost all the legal frameworks of regional integration highlighted the respect of the sovereignty of contracting parties, equality of states, and non-interference in domestic affairs as functioning principles of cooperation (*Soglashenie SNG*, 1991, preamble; The Alma-Ata Declaration, 1991, preamble; Charter of CIS, 1993; art. 1 & 3). However, loose institutionalisation of the CIS and its intergovernmental nature, over time, hindered the strong “supranational" integration perspectives for CIS with its current members (Kembayev, 2009; 34-41, 90-91), pushing territorial fragmentation of post-Soviet Eurasian integration. As a result, the president of Kazakhstan, N. Nazarbayev, in 1994 at Moscow State University, proposed the formation of the Eurasian Union (Nazarbayev, 1994a). The same year Nazarbayev even drafted a project for the formation of the Eurasian Union of States, where he openly suggested constructing supranational bodies, including a Parliament and a Commission to coordinated deeper economic, military and socio-political integration (Nazarbayev, 1994b, 91-95). He even abandoned the consensual decision-making mechanism proposing a truly supranational law-making procedure based on a qualified majority (*ibid*). Certainly, the draft project institutionally [not indeed in a normative, ideological sense] was truly the European Union’s analogue in post-Soviet space. Even tough the idea of such a deep integration project has been abandoned, Russia, Kazakhstan, and Belarus further deepened their integration agenda and formed the Eurasian Economic Community in 2000, seeking joint coordination of economic and trade affairs (*Dogovor EvrAzEs*, 2000). Without treating the aspects of supranational institutions of this newly formed integration union, it has been the predecessor

organisation for Customs Union formed in 2010, and finally for the Eurasian Economic Union.

With the regional integration process in post-Soviet Eurasia, the Russian foreign policy also evolved according to the new realities. The new foreign policy intended to reorganise the relations with newly independent, sovereign states, formerly part of the USSR and Russian empire. Speaking about the interrelation between Russia and the post-Soviet states, Russia, both in a legal and political sense, acknowledged that post-Soviet space is Russia's zones of interest (*Ukaz Prezidenta*, 1995) or zones of privileged interests (Medvedev, 2008). At the scholarly level, the interrelation was described on the ground of zones of influence rather than interest (Laruelle, 2008; 8-9; Cooley, 2017; Allison, 2020; 34-37), highlighting the non-equal format of the relationship between Russia and post-Soviet states, where, according to Klein, Russia solely defines the rules (Klein, 2019; 8). This claim indeed is not groundless. When Vladimir Putin was claiming that the Ukrainians and Russians "are basically one people" (Kremlin, 2017), that Kazakhstan never had statehood before the dissolution of the USSR (BBC, 2014), and that those post-Soviet countries received "generous gift," territorially, from the USSR (Lenta, 2020), he, at least, undermined the concept of sovereignty and what is more critical, manifested Russian perception of post-Soviet States in relation to its great power status.

It is in this regard that the collision occurs between the principles of sovereignty, equality, and non-interference enshrined in all post-Soviet regional initiatives (including the EAEU) and Russian foreign policy, which targets the post-Soviet space as its "zone of influence," or at very positive sense "zone of privileged interests." In short, a collision occurs between international law and foreign policy of a domestic actor, and this clash indeed could not escape influences over law-making, and institutionalisation of post-Soviet regional organisations, especially, if it possesses supranational bodies that regulate transnational matters.

1.3 What does such history mean for Eurasian supranationality?

The historical evidence illustrated above explains that the Eurasian integration evolved on different foundations compared to the European integration. The Russian foreign policy's political underpinnings have shaped the Eurasian integration as a relatively separate legal system, dissimilar to the European-Christian legal traditions. Accordingly, the concept of supranationality also has been shaped differently in the Russian legal-political milieu. To reaffirm different characteristics of "Eurasian-Russian" supranationality, a bunch of elite interviews was conducted with political science scholars to figure out particularities of Russian foreign policy in Eurasian integration. However, to figure out to what extent European supranationality functions similarly or differently from the Eurasian one, an interview has been conducted with the Honorary Director of the EU Commission. The findings support three common concepts that have shaped the Eurasian-Russian reading of supranationality. These are; great powerness (zones of influence), hierarchy, and informal practices. These three common concepts, together with legal historical analysis, construct the supranational idea of Eurasian integration, which I conceptualise as authoritarian supranationalism.

1.3.1 Great power doctrine and supranationality

Russian apprehension of great power is a cornerstone for the conduct of its foreign policy with the countries of post-Soviet space, which Russia considers its own zones of influence. Accordingly, the Eurasian project has been perceived as a part of the Russian sphere of influence thinking (Makarychev, 2021, appendix 1). Morozov also approves this claim by emphasising "that in post-Soviet space, Russia definitely priorities these zones of privileged interest and everything that [is] connected with that" (Morozov,

2021, appendix 2).

The connection between zones of influence and Eurasian integration also powerfully shapes the institution-building at the EAEU. Hence, the supranational institutions of the EAEU are scholarly perceived as a tool of great power management. "I don't exclude that Russian speakers, refer[ing] to something as "*nadnational'niy,*" supranational, still have in mind a very strong imperial momentum….," adds Makarychev (Makarychev, 2021, appendix 1). Similarly, Morozov confirms that supranational institutions are built as a continuation of Russia's great powerness "to confirm or to reinforce Russia's great power status within its own region because, as legal instruments of dominance…." (Morozov, 2021, appendix 2). However, it is fundamental that these scholars also reject that the Eurasian supranationalism is conceptually similar to EU's supranational integration inasmuch as in the European project, there is the idea of constraining countries rather than imposing an imperial stimulus (Makarychev 2021, appendix 1).

The dissensus is also highlighted in comparison with the European Union. Honorary DG of EU Commission, Dr. Mirel, claims; "how [do] we see Russia from the Commission, in particular, in DG Near? I can summarise it by saying dividing to reign (Mirel, 2021, appendix 3). With the example of Germany as the biggest economy of EU, he concludes on Russia, "I guess Russia would be even much tougher in that Union than Germany would be in ours. I don't [want] you to misunderstand. Germany is the biggest country, Germany has the biggest industry, and therefore there are always many numbers of a legislative proposal that may hurt, please or favour Germany. So Germany is more embarked than the other Member States into the process, but it does not mean that Germany is like a bull, trying to kill the Commission at every proposal" (*ibid*). Yet these are not mere assumptions without grounds since Dr. Mirel claims that consensual decision-making functions effectively in most cases (*ibid*).

Regarding the equality of Member States in the consensus building, he claims that although the Member States do not possess equal weighting to vote, in most cases, such voting procedure is nonexistent (*Ibid*). Obviously, the EU's institutional structure greatly constrained strong Member States (e.g., Germany, France) to transfer

supranational institutions to great power management structures. Thus, in reality, the equality of states is assured neither but nor it means a hierarchy and top-down law-making.

Therefore, the first distinctive point of how supranationality evolved and functions in the EU and Russia is Russia's perception of great power status, which ultimately means imperial frameworks of interactions. It does not necessarily follow that there are no economically and politically superior Member States in the EU. The distinctive sign is the way of dealing and consensus-building at the institutional level, and here the second distinctive feature materialises; the hierarchy of relations.

1.3.2 Hierarchy and supranationality

Supranationality for great power management, *ipso facto*, conveys special character to the interrelation between Member States of the EAEU. Through the deployment of great power and zones of influence concepts over post-Soviet Eurasia, Russia constructs asymmetrical relationships with post-Soviet countries, including in regional organisations such as CIS, CSTO, and EAEU. On this subject matter, Morozov claims that "…if we are talking about the post-Soviet region, it is mostly [about] spheres of influence, and they suppose to create an illusion of equality of states, but of course, it is an illusion, it does not even work as an illusion, it is enough to look at the economic data, for instance, and compare sources available to Russia and its partners, and it becomes clear that it is highly asymmetrical and even though this formal equality in some of the institutions, *de facto* it is working as a Russian instrument in the first place" (Morozov, 2021, appendix 2). Therefore, the first outcome of this asymmetrical relationship is that there is no respect for the equality of states in Eurasian integration. Additionally, the absence of equality of states in post-Soviet Eurasian integration is further restricted through top-down decision making since "Russia does not have a record of negotiating with smaller members" (Makarychev, 2021, appendix 1), and

subsequent chapters will illustrate that the EAEU hardly can change this record through its institutional means.

Moreover, this hierarchy goes beyond bilateral relations and also got its reflection concerning Eurasian supranational institutions. There is a kind of fear in Russian central authorities to give considerable freedom to supranational institutions even in the regional organisations established by them. That is why "Russia does not have a good record with dealing with supranational institutions [as well]. Russia is even weak in multilateralism…. There is a type of thinking, within this collective Kremlin, that institutions with a very high level of coordination power, up to supranational, requires too much from [them] and acting alone might be more effective", highlights Makarychev (*ibid*). In this respect, Russia has been classified as an authoritarian state that prefers top-down decision-making and the existence of supranational organisations empower rather than constrain the Russian foreign policy, further contributing to the hierarchical relationship in post-Soviet Eurasia.

At the EU level, the way of dealing with the Community institutions has diametrically dissimilar manner. Sometimes, even politically sensitive decisions can be made through lower echelons of institutional structure. Institutionally, the EU has developed to the degree that even lower level institutions can be involved in political decision-making, demonstrating how vital the supranational bureaucracy is in the EU. Dr. Mirel, in this regard, makes a distinction between clever and not clever Member States. For him, clever Member States are those (e.g., the UK in the past) that, to gain desirable outcomes from the Community institutions, deal with lower-level units of the EU Commission (Mirel, 2021, appendix 3). While, the opposite group "France, for instance, would plead to the DG, the Director-General, which is stupid. It is much better to try to influence right from the start of the process, trying to influence the man who holds the pen, rather than waiting until the ink is dry and then go at the above level, so there are different attitudes between the Member States, that is very informal as well." (*Ibid*). This pattern demonstrates that not only relations between the EU Member States are not hierarchical to the degree in Eurasian Union, but for the actual decision-making processes, all institutions at the EU level can possess a vital function. The above

mentioned is the major distinctiveness of the European legal order from the Eurasian one. It illustrates that the EU's legal order has gained significant autonomy, and its institutions, including lower-level bureaucracy, function efficiently, forcing the Member States, no matter their power in the Union, to collaborate with them. Doubtless, the EU experience has been shaped in more than 60 years. Notwithstanding, even if comparing the ECC with the EAEU, the former would be classified institutionally more efficient and autonomous than the current EAEU's bureaucracy.

The hierarchical nature of post-Soviet Eurasian integration combined with the concept of Russia's great powerness ultimately leads to a different type of supranationalism which I intend to bring on. Yet as far as the transfer of competencies to supranational regulation is foremost reflected in law-making procedures, then the methods excised by Russia to deploy its interest is the following characteristic of Eurasian supranationality.

1.3.3 Informal practices in post-Soviet Eurasia

Then if from one side, the Eurasian integration is based on great power management and asymmetrical relationship of Member States, and from the other side legally the treaty stipulates the transfer of competencies to supranational institutions, the question remains how informally this is replicated in relations between Russia and the other Member States. Generally, when assessing the prevalence of formal (legal) relations and informal mechanisms, political scientists admit that the latter is preferable for Russian authorities. Makarychev, for instance, claims that non-institutionalised form of domination is preferable for Russia (Makarychev, 2021; appendix 1). In a similar vein, "Russian approach to international law has always been that everything needs to be put on the writing, so everything should be formalised. So they always like to create formal institutions and make formal agreements", adds Morozov (Morozov, 2021, appendix 2). Meanwhile, he agrees that there is mutual existence of both institutionalised and informal practices, and in case of malfunctioning of formal channels, Russia can

intervene informally (*ibid*).

Even culturally, these informal practices are justified since scholars arguably claim that the relationship between post-Soviet countries is based on the same shared cultural background and institutional legacies (*ibid*). From this end, it is visible that hierarchy is an operating mechanism to secure Russian zones of influence concept in the posit-Soviet region. Respectively, it ultimately straightens informal practices over formal and legal commitments.

Scholars, observing the utilisation of informal tools by Russia, always construct their ideas on state-level relationship, forgetting that relationship exists between Russia and the institutions that it structures within its own regional organisations. That is the first distinctive point compared to European integration. In the framework of the European Union, informal practices defiantly are perceived from a broader perspective. That is why Pierre Mirel, while answering my question on informal practices at the EU level, firstly mentioned the procedure of "white book," published by the Commission, which seeks, before embarking on a legislative proposal, to gather informal responses from all the stakeholders; states, civil society, private companies, etc. (Mirel, 2021, appendix 3).

The next point of differentiation is the nature of informal practices within the supranational legal order. When it comes to the institutional level, Dr. Mirel highlights that almost always consensus is made by EU institutions (Commission, Council), also via informal means, traditionally, in a restaurant, during a lunch (*ibid*). However, he does not claim that informally the Member States do not deal with the EU institutions. EU Commissioners regularly receive calls not only from their home countries but also from other countries, and Dr. Mirel rightly claims "that happens on a regular basis, [even though] that the Treaty clearly says that Commissioners are independent of their country. Nevertheless, this happens on a regular basis" (*ibid*). However, it is essential to highlight that in the EU, all the Members opt for this opportunity. Although Dr. Mirel admits that equality of states is not, in reality, fully respected, the informal practices are not based on great power management as it is in the case of Russia in the EAEU (Mirel, 2021, appendix 3). One of the reasons for this argument could be that in the EU, the existence of France and Germany as major powers to some extent counterbalance great

power sentiments in these countries. However, the role of the Union's institutions should be undermined neither.

In this regard, it is still important to note that in post-Soviet Eurasian integration, the formation of formal institutions is a method of legal domination over post-Soviet space, empowered from Russia's great power status (Morozov, 2021, appendix 2). Consequently, this great power management, even more explicitly, is reflected in informal decision-making at Eurasian space.

What can be concluded is that informal practices have prevalence over institutionalised channels of decision-making in post-Soviet Eurasia. Notwithstanding, the nature of these informal practices is still based on the concept of Russian great powerness, which ultimately leads to authoritarian decision-making at the regional level when necessary undermining the will of the other Member States and institutional structures.

1.4 Authoritarian supranationalism

Historically, supranationalism has been perceived by early Eurasian scholars as a way of Russian domination over the territories of imperial Russia. From this regard, it is not surprising that they have equalised the "*sverkhnatsional'nyi*" [supranational] continent to the Russian-Eurasian world (Savitsky, 1931; 23). Thus, the Eurasian integration has developed or has in its roots the understanding of one centralised "*sverkhnatsional'nyi*" space, where there is a single state-world, great power's domination. During the Soviet period, the same approach has prospered under Marxist-Leneninst political doctrine, which has drastically changed after the dissolution of the USSR. With the emergence of sovereign nations in post-Soviet Eurasia, this deliberation has achieved a new contour. As a result, the Eurasian space became the zone of influence of the former dominant player Russia, which ultimately has changed the patterns of relationship with relatively decentralised Eurasia based on its concept of great powerness. These historical accounts on Eurasian-Russian space have not diminished with the dissolution of the USSR.

Instead, they continued to develop and have been instrumentalised in post-Soviet Eurasian integration.

T. Neshatayeva, judge of the EAEU Court and one of the most prominent legal scholars on Eurasian integration, provides meaningful accounts on civilisational and institutional matters of the EAEU. Her understanding does not differ too much from the early Eurasianists. In her article, "Eurasian integration; common values and legal institutions," she provides pivotal arguments on these matters. Making a distinction between Christian, Chinese, Indian, and Muslim civilisations, she claims that Russia is a "civilisation state" that includes characteristics from all the civilisations as mentioned above (Neshatayeva, 2020; 20-21). It is the same reasoning as Alekseev had when classifying its typology of states, representing Russia as a state-world. Being a Christian civilisation, Russia, like the other European Christian state, respects the rule of law (*ibid; 20*). Meantime, Russian multiculturalism, influenced greatly by Muslim and Chinese cultures, has also developed particular respect towards power (authority) (*ibid*). She conceptualises this respect as "rule of power" and claims that in Russia, there is the dualism of the "rule of law" and the "rule of power"(*ibid; 21*).

Highlighting the role of equality of states in the EAEU, she assesses the superiority of the Russian Federation, providing mere facts regarding the economy of Russia and representation of Russians in the EAEU institutions (*ibid; 22*). However, in reality, underlying the non-equal status of Russia *vis-à-vis* remaining countries, she leads to the construction of a hierarchical relationship.

Eventually, she claims that from Chinese civilisational understanding, the Russian civilisational type borrowed harmony, that is why the consensual decision-making at the Eurasian institutions promotes harmonic relations within the Member States of the EAEU (*ibid*). On decision making and institution building, she maintains that the institutional frameworks of the EAEU are based on the rule of law and "rule of power,"again presenting it from civilisational underpinnings. Finally, arguing on the institutional design of the EAEU and powers attributed to the Union's institutions, she concludes that the Eurasian integration is based on multi-civilisational principles of multicultural Russia as a state (Neshatayeva, 2020). A claim that early-Eurasianists

made 70-80 years ago.

This thesis claims that the historical accounts that this chapter has developed not only are relevant currently but practically circulated by contemporary protagonists of Eurasian integration, and considering their role in the EAEU institutions, the Eurasian "supranational" legal order are constructed on the contemporary application of ideas of early-Eurasianists. What is evident from Judge Neshatayeva's conceptualisations and understanding of the EAEU is that she is heavily influenced by early-Eurasianists thoughts on multiculturalism, state-civilisation conception, the influence of Asian culture, and statist approach of sovereignty and the international legal system. This is what is missing when scholars observe the EAEU. These conceptualisations demonstrate that the Eurasian ideological foundations go back to the early 20 century, even probably the Tsarist period, albeit it was institutionalised only in 2015.

Now returning to the management of this "*sverknatsional'nyi*" [supranational] order, some concluding remarks are necessary to define the authoritarian supranationalism. Russia has developed its external relations with the remaining post-Soviet space from the position of great power, a relationship based on hierarchy, which ultimately straightened the informal practices of decision making over formal-legal procedures. From this perspective, it is hard to disagree that "if the imperial identity gets in upper hand that might be some kind of imperial supranationalism, so some of the institutions might be called supranational by form, but by content that would be more imperial" (Makarychev, 2021, appendix 1). The legal historical analysis demonstrated that the imperial identity won. Under this theoretical ground, it becomes obvious that supranational institutions at the EAEU level function in different political milieu, which ultimately means a diametrically different Eurasian legal order from the European counterpart. That is why it is unchallenging to reject all the claims that the EAEU has developed EU-like institutions by content (it can factually mimic the names of institutions, general role, structure), and there is another reason to claim that. When the ASEAN and Mercosur have been established as regional trade organisations, there is no doubt that the EU not only supported the idea to establish these Unions but provided consulting to these countries on how to develop a regional union. However, for the EU-

EAEU relations, I doubt that such processes occurred, and there are obvious reasons for that. Six to seven years have passed after the founding treaty of the EAEU came into force, yet there is still no legal or political relations between the EU and EAEU. While with ASEAN, the relations formalised within three years and with Mercosur within four years. Although Crimean crisis can illustrate why there is no relation, it should be highlighted that the EAEU formally compresses more than Russia, while the EAEU is geographically the closest "supranational union" to the EU. This further approves the claim that supranationality as a concept has evolved and shaped differently in the Eurasian milieu, being heavily influenced by the claim of Russian civilisational distinctiveness. Considering all these historical and political foundations of the Eurasian integration, the conclusion is that there is a particular type of supranationalism for the Eurasian integration, which I conceptualise as authoritarian supranationalism.

An authoritarian supranationalism is a distinctive type of supranationalism based on the great power concept, where the actual transfer of competencies to supranational institutions occurs; per contra, the functioning law construct institutional hierarchy, which establishes a supervisory mechanism for the decisions of a supranational institution to alter or revise such decisions without judicial and democratic supervision, and where strong informal practices behind the formal decision making prevail.

In consequence, while legal scholars are indifferent to the political foundations of supranationalism in post-Soviet Eurasia, they merely cannot undermine this concept of authoritarian supranationalism, which is well supported via legal terms and will be assessed in the next chapter.

Chapter II. Institutional law of the EAEU

Institutionally, the EAEU can be considered as the most advanced form of integration in post-Soviet Eurasia. Although it does not have any parliamentary body, unlike CIS and CSTO, it has a functioning executive-like commission and an effective judiciary, a rare phenomenon in post-Soviet Eurasian integration. The parties' intention to establish a Union with functioning supranational (*nadnatsional'nyi*) institutions was explicitly anchored in the declaration on Eurasian integration (*Deklaratsia*, 2011). The Treaty, meanwhile, is somewhat ambiguous in this standpoint, escaping direct designation of supranational institutions, including the case of the EAEU Court. Research in this field becomes even more laborious inasmuch as the judgments and advisory opinions of the EAEU Court, unlike the Judgments of the ECJ, do not contain the reasonings of parties of conflicts, including the Commission, which restrict a researcher to assess how the Member States and EAEU institutions conceive a particular legal matter. Without hesitation, how Member States and Union's institutions perceive supranationality is fundamental and could be facilely determined if the Court's judicial acts encompassed such parts, a practice that a researcher of the EU law opts for when assessing the European supranational legal order.

Nevertheless, disregarding these procedural issues to determine whether the EAEU possesses supranational institutions, four main fragments should be revised; the first is the general structure of the EAEU institutions. The second is the competence of the Union. The third is the law-making procedures by these institutions, and the fourth is the judicial system of the Union. The chronological explanation of these broadly defined dimensions can facilitate determining whether the EAEU possesses supranational institutions and, if so, what are the characteristics of these institutions. Accordingly, this chapter is constructed based on the logic of these four general questions.

2.1 Institutional framework of the EAEU and competences of the Union

The TEAEU stipulates that the Supreme Eurasian Economic Council, Eurasian Intergovernmental Council, Eurasian Economic Commission, and Court of the Eurasian Economic Union are the principle bodies of the Union (TEAEU, 2015; art. 8). Apart from these institutions, auxiliary authorities can be established through the decisions of the Supreme Council (*ibid*; art. 5). The TEAEU also foresees the establishment of some other independent authorities in specific cases. For instance, the institutional aspect of harmonisation of legislation in financial markets is the establishment of a supranational authority to regulate financial matters (*ibid*; art. 103). It is, actually, the only case when the Treaty employs the notion of supranational authority. However, since this supranational authority will be formed by 2025, it is currently inopportune to determine how the Member States intend to define a supranational institution and its functions. Nevertheless, the general pattern is that the Treaty escapes denominating any of these institutions as a supranational body of the Union, which is incomprehensible inasmuch as the Member States have not precluded to denominate the financial regulator as a supranational authority of the Union.

Generally, the Russian academic circles delegate the supranational functions to the Commission of the Union (Nikolaevich, 2019; 27). Nevertheless, the substantive research on this subject matter explicates that such an assumption is partially grounded. Some scholars even go further and claim that the acts of all the bodies of EAEU [the EAEU Court excluded] have supranational character (Bakayeva, 2016; 73). These contradictions further reinforce the rationale that supranationality as a conceptual phenomenon functions somewhat ambiguously in Eurasian legal order.

The Treaty stipulates that the Supreme Council "shall be the supreme body of the Union" (TEAEU, 2015; art. 10). Although it does not denominate the role of the Intergovernmental Council, its competencies indicate that this body has mainly a supervisory role. The configuration is further unusual for the EAEU Commission.

Article 18 stipulates that “the Commission shall be a permanent governing body of the Union. The Commission shall consist of a Council and a Collegium” (*ibid*; art. 10). From provision follows that the Commission of the EAEU has a “bi-cameral” structure, enabling the hierarchisation of the Commission. Regulation of Eurasian Economic Commission establishes that “the Council of the Commission shall carry out the general regulation of integration processes in the Union, as well as of the general management of the Commission's activities” (Regulation EEC, 2015; p.22). Regarding the Collegium, the Regulation stipulates that “the Collegium of the Commission shall be the executive body of the Commission” (*ibid*, p. 31). Unlike the Treaty on European Union, which stipulates that “the Commission shall promote the general interest of the Union and take appropriate initiatives to that end” (TEU, 1992; art. 17), the TEAEU does not stipulates whom it represents. Howbeit, considering that “Members of the Collegium of the Commission shall work in the Commission permanently" and “when exercising their powers, members of the Collegium of the Commission shall be independent of all public authorities and officials of the Member States and may not request or receive instructions from government authorities or officials of the Member States” (Regulation EEC, 2015; p. 34), it is explicit that the Collegium at least cannot directly represent the interests of the Member States, which create an illusion that it is the supranational body of the Union since differentiation between a supranational and international organisation generally is measured with “degree of autonomous regulatory discretion delegated to a denationalised agent to escape political sanctions from the Member States” (Peter, 2016). The “bi-cameral” institutional structure of the Commission raises many questions in this regard. One crucial point is the independence of the Collegium. The Regulation stipulates that one of the functions of the Council [of the Commission] is to instruct the Collegium (Regulation EEC, 2015; p.14) and as far as the Council is not constrained to receive instructions from the Member States (which would be non-sense as far as the Council is composed of deputy head of governments), indirectly, via the Council, Member States can instruct the Collegium, which certainly limits the supranational nature of the Commission.

However, the general trend is that the Treaty does not stipulate any article that either directly or within general frameworks can answer if any institution enjoys supranational character. The ambiguity is even more sharpened through judicial acts adopted by the EAEU Court and domestic high courts of the Member States. The EAEU Court held that "the article 2 of the Treaty empower to the Grand Collegium of the Court to conclude that, for the classification of any field as common policy, it is necessary; 1) the existence of common legal regulation; 2) transfer from the Member States of jurisdiction to **Union's bodies** within **their** supranational competencies"(*Konsul'tativnoe zaklyuchenie Suda EES*, 2017; 4). From this interpretation, it is unequivocal that for the Court, the supranational competencies can be attached to any Union bodies, since the Court utilises plural form when referring to supranational institutions. From this regard, it is obvious that for the Court, supranationality as a character is attached to the area of policy rather than an institutional form of decision making. Similarly, some of the domestic Courts in the EAEU Member States have developed the same reasoning regarding supranational competencies. The Constitutional Court of Armenia, conducting *ex-ante* supervision and assessing the constitutionality of the agreement on Armenia's accession to the EAEU, stressed: "the supranational bodies are formed for the resolution of objective legal relations at a supranational level. It is a significantly different quality of supranational collaboration" (*SDO-1175*, 2014). From this interpretation, it follows that CC of Armenia also refers to all Union bodies of the EAEU since it remains indeterminate, which is the supranational regulator for the Constitutional Court of Armenia. A diametrically different interpretation was given by the Russian Constitutional Court. The Russian Constitutional Court, examining the application of the EAEU Commission's decisions in time and space, proclaimed that "in this regard, the Constitutional Court of the Russian Federation considered the issue of the effect of acts of intergovernmental bodies in the field of application of customs legal relations in time" (*Opredelenie Konstitucionnovo Suda RF* No 588-O, 2020). This reasoning signifies that the CC of RF does not even perceive the EAEU Commission as a supranational body, considering the latter as an intergovernmental one, which ultimately

means intergovernmental bargaining and rejection of supranational decision-making. This approach is consistent with the early assessment of soviet conceptualisation of European Communities, according to which there are either states or intergovernmental organisations, in short, *tertium non datur*.

This divergence of reasoning both at the domestic and Union level further aggravates the complexity of supranational decision-making. Actually, in the EU treaties, an explicit reference to the term "supranational" is also missing. Nevertheless, the fact that article 9 of the Treaty establishing the ECSC explicitly highlighted the supranational character of the High Authority (CECA, 1951; art. 9), historically, the supranational character has been always attached to the Commission of the EU as a successor of "High Authority." In the case of the EAEU, although the founding Members declared their intention to establish supranational structures, the Treaty lacks any explicit reference on this matter. From this aspect, the search of supranational institutions can only be carried out through a combined interpretation of Treaty provisions and case law of the EAEU Court.

Then, if the Union law does not provide an explicit answer to this question, the next step is to figure out the configuration of competencies of the Union.

Unlike TFEU, which clearly distinguishes between exclusive, shared, and supporting competencies of the Union (TFEU, 2012; art. 2), the TEAEU does not explicitly provide any distinction of competencies based on the supranational criteria. The Treaty only separates policy areas according to which the Member States' domestic legislation should interrelate with the EAEU law. The Treaty anticipates three types of policies; common, coordinated, and agreed.

> "common policy" means the policy implemented by the Member States in certain spheres as specified in this Treaty and envisaging the application of unified legal regulations by the Member States, including on the basis of decisions issued by Bodies of the Union within their powers;"
>
> "coordinated policy" means policy implying the cooperation between the Member States on the basis of common approaches approved within Bodies of the Union and required to achieve the objectives of the Union under this Treaty;"

> "agreed policy" means policy implemented by the Member States in various areas suggesting the harmonisation of legal regulations, including on the basis of decisions of the Bodies of the Union, to the extent required to achieve the objectives of the Union under this Treaty" (TEAEU, 2015; art. 2).

Alike fractionalisation signifies that the legal system of the EAEU functions based on three types of policy areas; common, coordinated, and agreed. Notwithstanding, the contradiction is that article 5, which clarifies the jurisdiction of the EAEU, foresees only coordinated and agreed policies as means of treaty implementation (*ibid*; art. 5). While the objective of ensuring free movement of goods, services, capitals, and peoples is possible through either coordinated, agreed, or common policies (*ibid*; art. 1). In practice, the Treaty does not possess a separate legal ground which policies are considered common, which one agreed, and coordinated, a configuration that is apparent in the EU case inasmuch as articles 3(1), 4, and 6 of TFEU define all areas that go under exclusive, shared and supporting competencies (TFEU, 2012). Within the legal framework of the EAEU, each policy sphere in the Treaty explicitly mentions the method of policy coordination. For instance, agreed policy is required in the sphere of application of sanitary, veterinary-sanitary, and phytosanitary quarantine measures (TEAEU, 2015; art. 56), a coordinated policy is required in the sphere of transport (*ibid*; section XI), etc.

The treaty consistently employs the terms "agreed" and "coordinated" together, which can be interpreted that the TEAEU in practice makes a distinction between only two types of policy areas; coordinated, agreed, and common. Meanwhile, the Court, framing the distinction between coordinated and agreed policies, records that the core disparateness between coordinated and agreed policies is that for coordinated policies, the Member States should seek harmonisation of legal regulations based on decisions of the Union bodies, while agreed policies suppose collaboration between states based on common approaches (*Konsul'tativnoe zakliuchenie Suda EES*, 2017; 4).

Regarding the common policies, the Court held;

> "In the practice of the Court, two criteria have been formulated for assigning the legal norms of the Union to the category of "supranational regulation";

1) Existence of a common legal regulation;

2) Transfer of competencies by the Member States to the Union bodies within the framework of their supranational powers.

In case of observance of the mentioned conditions in the spheres related to the exclusive competence of the Union, the supremacy of the Union law over the supranational legal acts is ensured. It also means that in the case of matters referred to the supranational level of regulation, the Member States are obliged to refrain from adopting domestic legal acts contrary to the norms of Union law" (*Konsul'tativnoe zaklyuchenie Suda EES*, 2018a; 7).

The Court, on several occasions, directly denominated certain policy areas which are obeyed to common regulation of the Union. In the advisory opinions of 10 July 2018 and 18 June 2019, the Court affirmed that the regulation of competition policies is transferred to supranational bodies of the Union, which indicated that "the Member States are obliged to abstain from adopting domestic legal acts contrary to the norms of Union law on matters referred to supranational regulation" (*Konsul'tativnoe zaklyuchenie Suda EES*, 2018a; 4; *Konsul'tativnoe zaklyuchenie Suda EES*, 2019a; 5). However, at the Eurasian Union, differently from the EU law, the supranational regulation of common policies does not mean exclusivity. If at the EU the transfer of exclusive competencies means that the Member States are deprived of adopting domestically any legally binding act (Craig & Burca, 2020a), at the EAEU level, even in commonly coordinated policy areas [supranational coordination], Member States continue to possess national competencies. In this regard, the Court, assessing the division of supervision powers of national authorities and the Commission in the sphere of market competition, claims that both national and supranational (Commission) bodies are competent in the sphere. Moreover, their separation of competencies takes place depending on the negative impact of the breach on competition in the Member State market (competition of national authorities) or competition in the trans-border market (competition of commission) (*Konsul'tativnoe zaklyuchenie Suda EES*, 2018b; 8-9).

Following the treaty provisions and the Court practice, it is evident that at the EAEU, harmonisation of Member States' legal regulations is perceived through common,

coordinated, and agreed policies. Nevertheless, only in areas of common policy, the transfer of competencies to the supranational bodies of the Union has been rationalised by the EAEU Court. As far as there is some degree of ambiguity about which spheres can be coordinated through common policies, Member States' discretion is high to create additional obstacles for realising a supranational legal order. Thus, the question remains, which institutions have the competencies to adopt decisions in common policies, which is part of supranational regulation of the Union.

2.2 Division of powers between the EAEU institutions and law-making

The competencies of Eurasian institutions are predominately pronounced in the TEAEU. However, compared to the EU, it is complicated to separate the scope of competencies of the EAEU institutions in relation to each other. That is why before embarking on finding the supranational character of the EAEU institutional framework, a separate representation of institutions is necessary.

2.2.1 Supreme Council

The Supreme Council is the highest body of the Union. It is composed of the Head of States of the Members. Article 12 of the TEAEU stipulates that the Supreme Council "shall consider the main issues of the Union's activities, define the strategy, directions and prospects of the integration development and make decisions aimed at implementing the objectives of the Union" (TEAEU, 2015; art. 12). Then, the article enumerates the competencies of the Supreme Council (*ibid*). It also stipulates that the Supreme Council "can exercise other powers provided under the present Treaty and

international agreements within the EAEU" (*ibid*). Such an open-ended enumeration widens the powers of the Supreme Council, allowing adjustment of competencies through other international treaties of the Union, a phenomenon which is missing in the EU's profoundly regulated institutional framework.

The Supreme Council, within its powers, adopts decisions and dispositions by consensus (TEAEU, 2015; art. 13), which indeed engenders interstate bargaining for decision making. Politically, in practice, alike state-to-state level negotiations should be analysed through the lens of authoritarian supranationalism, including a strong emphasis on the concepts of great powerness, zones of influence, and *po principam* decision-making.

From this standpoint, crucial relevance has the Supreme Council's competence to reconsider the decisions of "lower" level institutions. Article 12 stipulates that the Supreme Council is competent to "upon request of any Member State of the EAEU reconsider decisions adopted by the Intergovernmental Council and the Commission or on the initiative of the Intergovernmental Council or the Commission consider the issues on which consensus was not achieved" (*ibid*; art. 12). The provision confirms that in addition to the main powers, the Supreme Council has unlimited competencies over the law-making process and can alter or revise any decision of the Intergovernmental Council and the Commission. The static interpretation of the provision concludes that the primary powers of the Supreme Council, which are enumerated in the same article, go beyond the vocation of a body that considers the main issues of the Union. It has power over everything, including the policy of supranational regulation, since the Treaty anticipates any exception on that matter.

2.2.2 Intergovernmental Council

After the Supreme Council, the Intergovernmental Council occupies the second layer of the institutional pyramid of the Union. It consists of Heads of Governments of the

Union (whereas Armenia has a parliamentary system, the deputy head participates in the meetings). Unlike the Supreme Council, the Treaty does not assign any specific role to the Intergovernmental Council. Notwithstanding, the overall assessment of the functions of the institution directs to the presumption that it has a supervisory function over the implementation of the Union law by the Member States (TEAEU, 2015; art. 16). The Intergovernmental Council also adopts decisions and dispositions by consensus within the powers assigned by the Treaty (*ibid*; art. 17). Similar to the Supreme Council, the powers of the Intergovernmental Council are not fully enumerated by the Treaty and can be adjusted through international agreements.

Regarding the law-making procedure, the Intergovernmental Council also possesses the competencies to alter and revise the decisions of the "lower" level institutions. Article 16 stipulates that the Intergovernmental Council can "upon a proposal of any member State of the EAEU consider issues on reversal or amendment of the approved decision of the Commission or, if not agreed, take them for consideration of the Supreme Council; approve the decision on suspension of the implementation of decisions of the Council or Collegium of the Commission" (*ibid*; art. 16). In this regard, the Intergovernmental Council is an additional "filter" between the Supreme Council and Commission, possessing the competencies to revise or alter any decision of the Commission. Thereupon, since the members of the Intergovernmental Council represent the Member States, the process remains still under interstate negotiation, and given that the two competencies of revising and altering the decisions of the Commission are general, it certainly also entails the decisions that Commission adopts in the sphere of supranational regulation of the Union. In this sense, the competence of suspending the decisions of the Commission additionally restricts the autonomy of the Commission, including on supranational matters.

2.2.3 Commission of the EAEU

Within the institutional framework of the Union, the Commission has the most ambiguous role, which includes precisely the debate over supranationality as if there is a body that can be more or less conceptualised as supranational at the EAEU, it is the Commission. That is because its composition (Collegium) and powers attributed by the Treaty, also crystallised through judicial review of the Union's Court, academically open space to consider it as a supranational authority.

The Commission is the permanent governing body of the Union (TEAEU, 2015; art. 18). The question, however, is; what does a governing body mean? What is the content of it? The Regulation on Eurasian Economic Commission clarifies these questions, specifying that the Commission is the permanent regulatory body of the Union (Regulation EEC, 2015; p. 1). Therefore, the role of the Commission is to legislate decisions that become part of the contractual basis of the Union (*ibid*; p. 13). Although the Commission can adopt organisational regulations and dispositions, such acts do not have a normative nature and are not considered as binding acts for the Member States. Accordingly, they do not become part of the EAEU law.

As mentioned above, unlike the EU, the EAEU Commission is a "bi-cameral" institution comprising the Council and the Collegium. The Regulation enumerates the general areas of the competencies of the EAEU Commission. Nonetheless, the division of powers between the Council and the Collegium is determined through the Supreme Council's Regulation (*ibid*, p.14.). It is the Supreme Council to decide which powers to attribute to the Council and which ones to the Collegium. Admittedly, such an arrangement indicates that the Supreme Council determines the level of supranationality of the Union. In support of this argument, the Supreme Council has approved the Working Regulation on Eurasian Economic Commission, where annex 1 elucidates the division of competencies between the Council and the Collegium of the Commission (*Reshenie* N98, 2014).

Therefore, to illuminate the institutional characteristics of the Commission, both bodies

require separate representation before the assessment of their interrelation with the remaining bodies.

2.2.4 Council of the Commission

If observing the Council's status, in regard to Collegium, it has a higher footing in the institutional pyramid. It is because the Council of the Commission "shall exercise general regulation of integration processes in the EAEU, as well as general management of the Commission" (Regulation EEC, 2015; p. 22). The Council is composed of deputy heads of governments of the Member States, and the primary vocation of the body is to "arrange work on improving the regulatory legal basis of the EAEU" (*ibid*; p. 22). It adopts decisions and dispositions by consensus (*ibid*). Similar to the Supreme Council and the Intergovernmental Council, the Council of the Commission also has the power to alter and revise the decisions of the Collegium and both the Member States and the members of the Council of Commission dispose of such right to initiate (*ibid*; p.23, p.30). The hierarchical nature of the Council and Collegium relationship is also observable through the mechanism of instructions. The Regulation, particularly, stipulates that the Council of the Commission can instruct the Collegium in any matter (*ibid*, p.23). From such a perspective, the Council can be regarded as a supervisory body over the Collegium. The question persists; why foresee a separate Collegium in the institutional framework of the EAEU?

2.2.5 Collegium of the Commission

The treaty stipulates that “the Collegium of the Commission shall be an executive body of the Commission” (Regulation EEC, 2015; p.31). This is, indeed, a strange

denomination since the existence of an executive-like body shall signify that other bodies have legislative, judicial powers, similar to the separation of power at the state level. That is why it should be perceived differently than the term executive has been exercised to portray state institutions. With the observance of the powers of the Collegium, one can assess that the Collegium foremost possesses a "legislative" power as it has the sole right, within the EAEU institutions, to initiate legal proposals (*ibid*; p.43). From this perspective, it is similar to the EU Commission, which disposes of an almost unlimited right to a legislative proposal (TEU, 1992; art. 17(3)). Yet, in the Eurasian case, the Member States continue to own a right to initiate, and in such cases, the Collegium only has an organisational role (Regulation EEC, 2015; p43). Certainly, a similar legal arrangement undermines the supranational character of the Union. It is unconvincing that the Member States can propose something out of their national interests, and even if a legislative proposal from a Member State as such does not signify binding obligation for the Commission to adopt a decision, it certainly adds an additional burden on the Commission to consider the proposals. Meanwhile, supranational bodies have the vocation to raise the effectiveness of legal measures rather than double the procedure of legal regulation.

The Collegium is composed of 2 members per Member State, appointed by the Supreme Council on the proposal of Member States (Regulation EEC, 2015; p32; *Reshenie* N98, 2014). The Collegium passes decisions, recommendations, and instructions, while only decisions have binding nature and become part of the contractual basis of the Union. The decisions are adopted on either qualified majority or by consensus (TEAEU, 2015; art. 18). Notwithstanding, the consensual method is an exception, and it is the Supreme Council to delineate the spheres of sensitive issues where the Collegium should act unanimously (*ibid*). Otherwise, the Collegium adopts normative acts based on the qualified majority. The aforementioned points further prove the limits of the Collegium as a supranational body.

2.3 Institutional balance in the EAEU

The legal structure of the EAEU institutions manifest a strong top-down approach of law-making at the Eurasian integration, a phenomenon that the EU legal order attempted to escape (Craig & Burca, 2020b). It has engendered a situation that in the law-making processes, the Supreme Council absorbed the powers of remaining institutions in addition to its central powers. The Intergovernmental Council did the same concerning the Commission. The Council of Commission, via altering and revising the decisions of the Collegium, gained supervision over the latter. In short, an institutional balance is scarcely respected at the Eurasian Union.

However, other supranational legal orders have also encountered such problems related to the division of powers between the institutions. In this regard, the ECJ delivers valuable reasonings. Considering the different powers of Community institutions, it clarifies that;

> "by setting up a system for distributing powers among the different Community institutions, assigning each institution to its own role in the institutional structure of the Community and the accomplishment of the tasks entrusted to the Community, the Treaties have created an institutional balance. Observance of that balance means that each of the institutions must exercise its powers with due regard for the powers of the other institutions. It also requires that it should be possible to penalise any breach of that rule which may occur. The Court, which under the Treaties has the task of ensuring that in the interpretation and application of the Treaties the law is observed, must therefore be able to maintain the institutional balance, and in order to do so must be able to review observance of the prerogatives of the various institutions by means of appropriate legal remedies" (European Parliament v. Council of the European Communities, 1990; para. 21-23).

Applying the logic of the ECJ assessment on Eurasian integration, two questions arise. Has the TEAEU created an institutional balance between the EAEU institutions?

Secondly, what kind of role does the EAEU Court have in such institutional balance? The second question is addressed in the next section. Regarding the potential institutional balance, the process of law-making should be assessed more thoroughly.

As mentioned above, the right to legislative initiation belongs to the Collegium of the Commission and the Member States. From this regard, the Treaty restricted other institutions to initiate normative acts, which factually balance the competencies between Collegium and remaining bodies. However, Member States' right to initiate seriously deprives the supranational rights of the Collegium. Considering that the Treaty irrevocably transferred the competencies to supranational regulation, the supranational regulation should be carried out exclusively by a Union institution that has appropriate competencies. From this regard, Treaty does not stipulate any provisions that regulate how the Member States implement their right to the initiation, while it stipulates the imperative norm for the Collegium to collect the proposals made by the Member States (Regulation EEC, 2015; p. 43).

Another significant issue is the institutional balance within the Commission of the EAEU. As mentioned above, it has a two-tier composition. The question is the viability of the Council of Commission. What is the legal value of this institution? If it has the vocation to counterbalance the intergovernmental v. supranationalism dichotomy, then why the Supreme and Intergovernmental Councils have been foreseen. If it attempts to supervise the actions (omissions) of the Commission then, why the treaty does not allow the Commission to plead to the Court of the Union for such matters. In consequence, the only interpretation of the existence of the Council of the Commission can be not the institutional balance, but solely the desire of the Member States to restrict the autonomy of the Collegium further, establishing constant control over the sole supranational regulator to escape any potential ungovernable situation that can arise from a supranational regulation.

The next essential aspect is the revision and alteration of decisions of the Commission. As illustrated above, the Supreme and Intergovernmental Councils have the right to alter and revise the Commission's decisions. Moreover, the Intergovernmental Council can suspend the implementation of a decision adopted by the Council and Collegium of

the Commission. Council of the Commission, in its turn, has the right to alter and revise the decisions of the Collegium. In the case of the amendment and cancellation of a decision of the Commission by the Supreme and Intergovernmental Council, it is the Member States that can initiate such process (TEAEU, 2015; art. 12(8), art. 16(7)). On behalf of Member States, it is the head of governments that submit a request to the Supreme and Intergovernmental Council for the amendment or cancelation of decisions (Regulation EEC, 2015; p.30). If no consensus has been reached at the Intergovernmental Council and the Commission, these bodies can request the Supreme Council to rule over such matters (TEAEU, 2015; art. 12(9)). The matter is more regulated in the interrelation between Council and Collegium of the Commission. Point 30 of the Regulation on the Eurasian Economic Commission stipulates that the Member States or a member of the Council of the Commission have the right to submit a proposal to the Council of Commission on reversing or altering a decision of the Collegium (Regulation EEC, 2015; p.30). Title IV of the Working regulation on EEC thoroughly assesses the process of cancellation and amendment of the decisions of the Collegium. Although the working regulation only provides procedural mechanisms for the cancelation and amendment of a particular provision, it is decisive to perceive it from the perspective of informal practices. After the initiation of amendment and cancellation of the Collegium decisions, in any phase of the process, the Collegium can cancel and amend its own decisions by its initiation (*Reshenie* N98, 2014; Title IV, para.120). Although it would be too skeptical to consider that this provision is a legal reflection of informal practices, it is also hard to consider why the Collegium should amend or reverse its own decision that has been adopted. Would there be legal guarantees for the Collegium to act independently? Such a question would not arise if the Collegium would have a significant degree of autonomy, but as far as it lacks any guarantees of intervention, it defiantly goes into the category of authoritarian supranationalism.

Trying to assure such institutional balance through these arrangements, the EAEU Court, in its advisory opinion 2019, proclaimed that the powers of the Supreme and Intergovernmental Councils to amend or cancel the decisions of the Commission is for

the purpose to ensure proper equality and collaboration between states (*Konsul'tativnoe zakluchenie Suda EES*, 2019b; 3). Howbeit, instead of treating the legal matter from the perspective of transfer of competencies to the supranational bodies and institutional balance, the Court highlighted the role of sovereign equality. The Court also clarified that to request the Supreme or Intergovernmental Councils to amend or reverse the Commission's decision, the Member States are obliged to bring the question firstly to Council of the Commission (*ibid;* 8). The clarification indeed can help to eliminate cases when the Member State would undermine the supranational body (Commission) of the Union and directly refer the question to the higher level of the institutional pyramid. However, neither the Treaty nor the Court's advisory opinion could assure institutional balance in this sphere, enabling even unfounded inquiries from the Member States to be discussed at the Supreme and Intergovernmental Councils or Council of Commission level. As far as in these bodies, the decision is made by consensus, the decision-making method further weakens the institutional balance and have drastic effects on the supranational integration of the Union.

The aforementioned facets demonstrate that the law-making procedure at the EAEU is highly hierarchical. Although formally in certain policy areas, according to the Court, the States have transferred their competencies to the supranational regulation, such type of regulation is functioning under a top-down decision-making mechanism, which can lead to a paradoxical situation when a policy area where the States transferred competencies to supranational regulation, because of lack of consensus, an adoption of decisions can be blocked by the Member States. Ultimately, since the Member States transferred the competencies and cannot legislate on such matters, a legislative vacuum can emerge. Meanwhile, the aim of escaping such a paradoxical situation is behind the distinction of an international organisation from supranational ones, as in the latter case, the scope of the autonomous regulatory power of such institutions is very high (Peter, 2016), and hierarchical decision-making is restricted (Craig & Burca, 2020b; 3-4). Under such a hierarchal configuration, the judiciary's role at the institutional framework of the EAEU becomes even more critical inasmuch as it can construct a medium of an institutional balance for a functioning supranational legal order.

2.4 What kind of judiciary?

The judicial activism of the ECJ was an essential impetus for European integration, enabling the construction of a genuinely supranational legal order (Azoulay & Dehousse, 2012). Somehow, it has eased the transfer of sovereignty from the Member States to the Community institutions, contributing to the development of a post-Westphalian legal system with conjugation of domestic and supranational legal orders. For the Eurasian integration, the Court as a body of a regional arrangement is a relatively new phenomenon. Although the CIS had a Court in its institutional framework, it would be challenging to consider it as a functioning body since it solely had jurisdiction over economic matters and was restricted by the sovereignty of the Member States, which retained complete discretion on the enforceability of the Court's decisions (Kembayev, 2009; 63-68).

With the foundation of the *EurAsEc* Court, the hopes were high that the post-Soviet Eurasian integration would choose the path of legal integration based on the rule of law. There were a couple of grounds for such a percipience. First, for the first time in post-Soviet Eurasia, the preliminary ruling, although not comprehensively, has been foreseen as a method of judicial oversight (*Satut Suda EvrAzEs*, 2011), further integrating domestic legal systems to the supranational order. Second, in its short life, the *EurAsEc* Court demonstrated signs of judicial activism, and the "*Iuzhnii Kuzbass*" case was the first in this type in post-Soviet Eurasia (Karliuk, 2016; 8).

The case is different for the EAEU Court. Some scholars maintain that the Court has an invaluable role in Eurasian integration (Federtsov, 2015), while others are quite skeptical, considering that a Court with limited powers cannot push forward more profound integration (Karliuk, 2016).

The Court is the permanent judicial body of the Union, ensuring "a uniform application of the Treaty, international treaties within the EAEU, international treaties between the EAEU and third party and decisions of the EAEU's bodies by the Member States and bodies of the EAEU, in accordance with the provisions of Statute" (TEAEU, 2015; art.

19; Statute CEEU, 2015; p1). It is composed of 10 judges, 2 per Member State, and the Supreme Council adopts the rules of procedure of the Court. While, in other regional organisations, for instance, in the EU, it is the Court itself to adopt its own rules on the procedure (TFEU, 2012; art. 253), which can be regarded as an additional attribution of a supranational character of an institution.

The fundamental aspect of a regional supranational judicial body is its jurisdiction, and on this matter, the EAEU Court has limited powers even compared to the *EurAsEc* Court. According to the TEAEU, the Court has jurisdiction over dispute settlement and clarification of the Union law (Statute CEEU, 2015; chapter IV). Regarding the dispute settlement, the Court's Statute stipulates that "the Court shall resolve disputes arising in connection with the implementation of the Treaty, international treaties within the Union and/or decisions of the Bodies of the Union" (*ibid;* p. 39). However, only the Member States and the economic entities are entitled to plead (*ibid;* p.39). Such limited access to the Court significantly deprives the supranational character of the Union. Notably, the Commission does not have the right to bring the Member States to the Court for non-compliance, and, more substantially, individuals are also deprived of pleading the actions (omissions) of Union's bodies. It is even meaningless to consider the cases of horizontal direct effect. Hence, such limited access determines Court's role in constructing a regional legal order.

Regarding the clarification (interpretation), the Statute stipulates that "at the request of a Member State or a Body of the Union, the Court shall provide clarifications to provisions of the Treaty, international treaties within the Union and decisions of the Bodies of the Union and, at the request of employees and officials of the Bodies of the Union and the Court, to provisions of the Treaty, international treaties within the Union and decisions of the Bodies of the Union regarding labor relations" (*ibid;* p. 46). Then it continues that "providing clarifications by the Court shall mean providing an advisory opinion and shall not deprive the Member States of the right for joint interpretation of international treaties" (*ibid;* p.47). From these provisions, two underlying positions are observable. First is that the clarification by the Court has an advisory role. The non-binding nature of the clarification, without hesitation, generates obstacles to construct a

well-functioning legal order. Furthermore, the Statute defines that these clarifications shall not deprive the Member States to jointly interpret international treaties. Such regulation provokes the emergence of competing interpretations, which indeed further aggravates the gap between domestic and supranational legal orders. Nevertheless, it is essential to note that the Statute only authorises joint interpretations for the international treaties, which ultimately signify that the decisions of the Union bodies solely can be interpreted by the Court of the EAEU, which certainly can be substantial to set up a Eurasian legal *acquis*.

The Court's role is significantly restricted by the nature of its decisions, too. The Court's advisory opinions have non-binding nature, while the decisions on infringements are binding only for the parties to the dispute (Statute CEEU, 2015; p.98, 99). This provision hinders the opportunity to develop Union's case law to guide the national courts in domestic affairs. That is why the Treaty does not include the EAEU Court's decisions in the law of the Union (TEAEU, 2015, art. 6). Exclusion of Court decisions from the sources of the Union law deprives unanimous application of the Union's law and firmly shakes the reputation of the Court's decisions. Such a legal configuration implies that the domestic Courts will scarcely comply with EAEU Court's interpretation in domestic affairs, which hinders the potentiality from applying the Union laws coherently.

Moreover, Court's decisions cannot alter or override the Union law or the member states' domestic legislation and cannot create new legal rules (Statute CEEU, 2015; p. 102). This norm restricts any viable form of judicial activism. Therefore, returning to the question of institutional balance, the Court is significantly constrained to ensure institutional harmony since it is deprived to meaningfully interpret the Union's norms or create new rules for effective functioning of a supranational legal order.

On the matter of judicial activism, EAEU Court Judge Neshatayeva distinguishes static interpretation and judicial activism. As for static interpretation, the Judge admits that currently, it is the main working approach of the Court's interpretation (Neshatayeva, 2017; 5-9). She incontestably privileges static interpretation for the EAEU Court. Meanwhile, she also acknowledges that currently, the Eurasian Court seeks to determine

a balance between static interpretation and judicial activism (Neshatayeva, 2020; 23). In this regard, it is strange to find such a turn from a person who has been actively involved in developing judicial activism through the *EurAsEc* Court, which certainly had more powers to shape both supranational and domestic legal orders (Karliuk, 2016). Nevertheless, compared to the *EurAsEc* Court, the main difference that weakens the EAEU Court's role is the nonexistence of a preliminary rulings mechanism. The Court's Statute does not foresee any mechanism of preliminary ruling, which would enable the domestic courts to request an interpretation from the Union's Court on a matter of the Union law. In fact, for instance, in the EU, the preliminary ruling has a significant position. First, it enforces the EU law *vis-à-vis* domestic legal orders (Conant, 2007; 48), but, most importantly, it advances the integration processes (Carrubba & Murrah 2005). Many vital principles, including the direct effect of the EU law, are results of the preliminary rulings, which prove that it has been valuable for European integration. Lacking such a mechanism, Eurasian integration has deprived the Court to strengthen its role as a supranational adjudication and shadowed the functioning of a supranational legal order since a unitary interpretation of the Union law turned to be merely impossible. In this regard, judge Neshatayeva is too optimistic when claiming that the domestic courts will consider the advisory opinions of the Court voluntarily (Neshatayeva, 2020; 22).

Another major pitfall is the enforcement of the Court's judgments. The fact that the Court's decisions should be executed by the Commission (Statute CEEU, 2015; p.113) is a positive development for the Eurasian integration. Nevertheless, it has been foreseen that the measures, in case of failure of execution of a decision, should be applied by the Supreme Council, which is a worrying arrangement. As mentioned above, the Supreme Council takes decisions by consensus. Considering that the Union law does not establish a specific procedure regarding the measures that the Supreme Council should apply in case of failure of execution of Courts decisions, the consensual decision making can substantially limit the enforceability of the Court's decisions.

Additionally, Russian legal discourse rightly admits that the decisions of a supranational court should have *erga omnes* enforceability and should be applied by all the Member

States inasmuch as it is the paramount quality to differentiate supranational courts from other types of the international judiciary (Kovler, 2019; 33). Indeed, the decisions of the EAEU Court lacks such *erga omnes* quality. Meanwhile, Russian academic discourse, one more time claiming that Eurasian integration is a mix of Christian, Muslim, and Buddhist civilisations, provides very civilisational, cultural claim.

Judge Neshatayeva, speaking about the enforceability of the Court's decision and *erga omnes* application, maintains;

> "the primacy of the law and legitimate decisions characterise contemporary law. Without disaffirming rationale, it should be emphasised that in the Chinese, Muslim traditions, the essential peculiarity is "to agree," "convince," "save face,"and fulfil the agreement. It is a substantial part of Asian culture. Hence, not an order, but persuasion becomes an effective way of communicating between courts, including national ones. Perhaps, for this reason, the acts of the Court [EAEU] are being executed voluntarily, and the question of enforceability has not yet arisen" (Neshatayeva, 2020; 22).

Definitely, such a justification is groundless, as it would be naive to consider that enforceability of supranational court's decisions can be figured out through civilisational affirmations. Probably Judge Neshatayeva should also remember that the Chinese and Muslim countries, being predominantly authoritarian, have a significantly different approach to the rule of law and informal practices. That is to say that formal institutions have a considerably disparate role in such authoritarian states. Especially, the courts are the most remarkable example. Although the courts, in an authoritarian state, sometimes have the discretion to rule, the executives have all informal measures to gain influence over the judiciary, a widespread phenomenon in Asian countries (Solomon, 2008; Solomon, 2007).

However, maybe Judge Neshataeva, even being aware of that, simply admits the authoritarian nature of Eurasian supranational legal order, indirectly confirming that the civilisation background of the Eurasian integration is based on the authoritarian foundations. On this matter, worth mentioning the recent constitutional amendments in Russia. The amended article 79 stipulates that "….decisions of interstate bodies adopted

based on provisions of international treaties of the Russian Federation were construed in a manner contrary to the Constitution of the Russian Federation, shall not be subject to enforcement in the Russian Federation.…" (*Konstitutsia Rossiskoy Federatsii*, 1993; art. 79). The problematic of recent constitutional changes was the hierarchy of constitutional norms over international judgments which has been already misused by the Russian federal authorities in several occasions (e.g. *Yukos* affair), engendering the Venice Commission's concerns over amendments (Mälksoo, 2021; 89-91). In reality, the amendments target all the interstate bodies of international organisations where Russia is a member, rather than only the Council of Europe, which also include the EAEU Court. Meanwhile, these constitutional amendments have been predominantly interpreted by the academic scholarship as a result of duel between the ECtHR and Russia.

Envisaging these ramifications, there is a supplemental restraint for the enforceability of the Court's judgements since it is improbable that Russia will enforce the judgments bound by its civilisational "obligations." The empirical evidence with *Yukos* case further proves such hypothesis. The July 2015 judgment of the Constitutional Court in respect to the *Yukos* case demonstrated that the enforcement of decisions of a supranational court [ECtHR] in Russia is based on the political will and interests of the Russian federal authorities (Mälksoo, 2016), rather than on civilisation underpinnings.

Overall, the general assessment of the aforementioned points demonstrates that the EAEU Court is a significantly modest judicial body. The absence of preliminary rulings and robust enforcement mechanisms fundamentally constrain the Court's judicial activism, which leads to the minor participation of the Court in the construction of the Eurasian supranational (even authoritarian) legal order. Scholars, judges attempt to shadow these dysfunctionalities with civilisational and cultural myths, which, although have some role, cannot cover the functional qualities that the Eurasian Court lacks. Therefore, although the Court has some characteristic of a supranational judiciary, it still relies heavily on the Member States' will (especially great powers), expecting support from their side to empower the Court in the Eurasian integration to adopt any pro-integrationist decision.

2.5 Finally, what are the supranational institutions of the EAEU?

In the European Union, the Member States, through their constitutional courts, have constrained the development of supranational legal order, usually highlighting the lack of democratic legitimacy that the EU institutional frameworks had (Solange I, 1974). Hence, the European supranational order's continued expansion has been, to the greatest extent, the result of the democratisation of the Union's institutional setup (Solange II, 1986). In reality, it is not a surprising development, as the transfer of competencies has been regarded as a restriction of sovereignty, a quality that is attached to democratic self-determination (Skordas, 2012; 8).

The matter is utterly different for the Eurasian integration. The democratic legitimacy of the Union bodies is the last question that distracts both the Member States and the EAEU Court. In this respect, the elimination of the parliamentary body at the Eurasian Union is not sublime. It is null and void the claims that the parliamentary body's nonexistence results solely from Kazakhstan's political opposition. This country has initiated the Eurasian integration and always included even directly elected parliament in the institutional framework of possible Union of Eurasian State (Nazarbayev, 1994b). The country even accepted parliamentary cooperation in the CIS, CSTO, Turkic Council. Hence, it does not exist, not foremost because of political opposition, but as democratic legitimacy has never become part of the institutionalisation of post-Soviet Eurasia and national self-determination. Consistently, this hypothesis validates that the Eurasian and European integrations function in different theoretical settings, in different realities, and the search for supranational institutions in the EAEU should be carried out differently.

Considering the treaty, court practice, and academic scholarship, it is manifest that with the establishment of the EAEU, the Member States transferred their competencies, in specific policy areas, to the supranational regulation to be carried out by the institutions of the Union. However, such a restriction of sovereignty is recorded solely in the case of

common policies. In the case of agreed and coordinated policies, the cooperation remains intergovernmental, enabling the domestic legal system to gain prevalence over supranational order. Although the treaty does not stipulate the policy areas that are regarded as ***common***, the Court's practice demonstrates that the common policies are currently expected in the area of competition. However, the number of areas included in common policy can be restricted or expanded via the Court's interpretations if a necessary political will prevail.

As far as the supranational policy areas are not directly stipulated in the Treaty and the areas of exclusive competencies of the Union are disregarded, the institutional framework lacks division of powers based on the criteria of supranational regulation. The institutional framework of the EAEU is strongly hierarchical. Accordingly, the sole supranational quality is the Collegium's competence to initiate normative acts, which distinguishes it from remaining bodies. Hence, the supranational quality should be attached to the Collegium of the Commission. However, certain restrictions should be regarded. First, alongside the Collegium, the Member States also have the right to initiate. Thus, the right to initiate a legislative act is not exclusive competence of the Collegium. Second, as far as there is a strong hierarchy of institutions, the Supreme, Intergovernmental Councils, and the Council of the Commission also participate in decision-making. Foremost, the Council of the Commission, having competencies in different policy areas (*Reshenie* N98, annex 1), can indirectly initiate legislation, as far as it has the power to instruct the Collegium (Regulation EEC, 2015; p. 14). Second, both Council of the Commission, Supreme, and Intergovernmental Councils have unlimited power to alter and revise the decisions of the Collegium. Thus, there is no institutional balance at the EAEU. Third, allowing all the institutions to revise and alter the Collegium decisions, the TEAEU ensures three circles [one at Council of Commission level, two at Supreme and Intergovernmental Council level] of intergovernmental bargaining, where the informal practices prevail over formal institutions. In that sense, worth remembering that the informal practices function far differently in post-Soviet Eurasia compared to the European Union, depending on

Russia's great power status, zones of privileged interest, and other qualities that shape authoritarian supranationalism.

Finally, the democratic and judicial oversights are almost non-functional at the EAEU. Foremost, the lack of a parliamentary body diminished any prospect of democratic accountability of the Union's institutions particularly, and the Union generally. The institutions of the Union are not restricted via democratic mechanisms while conducting their activities. This also hinders the functioning of the rule of law at a regional level. Second, although the TEAEU has established a permanent judiciary, the EAEU Court, the Court's competencies simply deprive the possibility of judicial activism by the Court, which is too essential for the functioning of regional legal order. Moreover, Court's decisions encounter enforceability issues as such mechanisms are loosely coordinated. Finally, the absence of preliminary rulings cut the connection between domestic and supranational legal systems, deepening the gap between two separate legal orders that ideally should function together.

Nevertheless, within its limited power, the Court still can be considered a supranational judiciary, as it has pushed several decisions and advisory opinions that are vital for the construction of regional legal order. The mere fact that it is a functioning institution is already an achievement for the Eurasian supranationality since the CIS Court unquestionably was a complete failure.

Combining the aforementioned observations, it is facile to demonstrate that the concept of authoritarian supranationalism is projected over the EAEU. It illustrates that although the transfer of competencies to supranational regulation occurred and the Collegium with the EAEU Court have some degree of autonomy, the institutional hierarchy, informal practices between great power and its zones of privileged interest contribute to such authoritarian supranationalism, based on the will of sovereign among sovereigns.

Chapter III. Incorporation of the EAEU norms in domestic legal systems

Whenever a supranational legal order is established, the interrelation between international, supranational, and domestic laws goes beyond the traditional monism v. dualism dichotomy because, as the example of the European Union demonstrates, the evolving nature of supranational [community] law more profoundly contributes to the rapprochement of *corpus juris* of Member States to each other (Koskenniemi, 1997; 172-173). The case of European integration construes that almost all the EU Member States, at the national constitutional level, differentiate the international and supranational laws *vis-à-vis* their domestic legal system (Martinico & Pollicino, 2012; 18-57). Additionally, when requisite, constitutional amendments were carried out in order to ensure the direct applicability and supremacy of the EU laws (*ibid*). The EAEU is a relatively new legal order, and the interrelation between domestic and the supranational legal systems has not provoked too many interpretations in the legal scholarship.

This chapter attempt to unriddle the interrelation between the supranational and domestic legal orders at the EAEU Member States. For this objective, primarily, there is a need to outline how the EAEU Member States constitutionally define the incorporation of international law in their domestic *corpus juris* with a particular emphasis on the EAEU norms. Once the interrelation between the EAEU and domestic legal systems is observed, the interest will be shifted to the principle of the direct effect of the EAEU norms.

This chapter is constructed based on the inquires represented above. First, all the Member States are observed to extrapolate how their domestic legal system systematise the incorporation of international norms in the domestic legal order. Next, through comparative legal analysis, the direct effect of the EAEU norms is appraised. Finally, the observation is concluded with the description of peculiarities of the EAEU legal system as a *sui generis* case in post-Soviet Eurasia.

3.1 Post-Soviet Eurasia; Monism, dualism, or pluralism?

In Kelsenian terms, the distinction between monism and dualism lies in the presumption that monism is based on the unity of international and state laws, while in the case of dualism, the international and state laws are separate systems, and the enforceability of international law depends on recognition of a State concerned (Kelsen, 1996; 111-117). The ECJ judgment on the direct effect of specific EU norms added new contours to the interrelation between international norms and the domestic legal system since, for the first time, several states have accepted to directly apply norms produced by supranational institutions without their exclusive competencies over law-making (Nollkaemper, 2014; 106). With such advancement, the EU legal order has chosen the path of constitutionalised international order, altering the traditional monism v. dualism dilemma with a three-layer interrelation of legal orders, compressing the international, EU, and national laws (Wessel, 2012; 11-12). This structure has led to the hierarchisation of norms, and this novelty eventually altered the relationship of international and domestic legal orders (*ibid*).

Nevertheless, such legal modification has been crystallised in a liberal-democratic international milieu, where two fundamental aspects are relevant. First, the Community norms gained a significantly higher place and, ultimately, direct applicability in domestic legal orders because of the European institutional system's democratisation. The *Solange I* and *II* cases are the most prominent examples of that. Second, the liberal, individualistic understanding of international law of the EU Member States eased the practical application of the direct effect of the EU norms.

The rationale is totally nonidentical in Eurasian space. The countries constituting the EAEU can not be classified as democratic since they are either authoritarian or semi-consolidated authoritarian states (Freedom House, 2019). This contrast alters the patterns of States' appreciation of the EAEU institutional democratisation. Furthermore, these are also countries that can be classified neither liberal. Especially when it comes

to human rights, it becomes seemingly apparent. Nevertheless, before embarking on the question of how illiberal authoritarians treat authoritarian supranational legal order, it is worth assessing how each of these countries perceives, domestically, the international and EAEU norms *vis-à-vis* their domestic legal system.

3.1.1 Armenia

Although contemporary international law rejects the pure monism v. dualism dichotomy (Verdier & Versteeg, 2015; 515), Armenia factually can be classified as a monist country. The law on international treaties of the Republic of Armenia [hereafter RA] stipulates that “international treaties are a constitutive part of the legal system of the RA ” (*HH Orenq Mijazgayin Paymanagreri Masin,* 2018, art. 3 (2)). “In case of conflict between the norms of international treaties ratified by the RA and those of laws, the norms of international treaties shall apply," stipulates the Constitution of RA (*HH Sahmanadrutyun*, 2015; art. 5 (3)). Neither the Constitution nor the law on international treaties do not differentiate the incorporation of international and the EAEU laws in the domestic legal order. Nevertheless, after the constitutional amendments in the RA, which come into force after Armenia acceded to the EAEU, a new provision has been formulated in the Constitution of the RA, which has never been in the Constitution since independence. Article 205 stipulates that “the issues regarding accession of RA to supranational international organisations, as well as those related with territorial changes of the RA, shall be resolved through referendum” (*ibid;* art. 205). Such specific provision demonstrates that the treaties on accession to a supranational organisation are exceptional cases and an exclusion from the general international treaties, for which there is no requirement of a referendum.

Actually, Armenia has joined the EAEU via ratification of the TEAEU by the Parliament in 2014. Nevertheless, back in 2013-2014, when Armenia manifested its intention to join the EAEU, the draft version of Constitutional amendments was in circulation for public discussions. Therefore, in a way, Armenia's instantaneous decision

to join the EAEU before constitutional amendments can be perceived as a political manipulation to bypass the legal requirement of referendum stipulated in the draft constitutional amendments. However, in reality, the rule of law could be ensured if the Constitutional Court of the Republic of Armenia arranged a referendum for the treaty on Armenia's accession to the EAEU, being aware that new constitutional amendments foresee such a procedure. Nevertheless, leaving the retroactivity of the provision on a referendum for further research, the reality is that, currently, the treaties on accession to a supranational organisation are regarded higher than "ordinary" international treaties since for the former, the current constitution anticipates the highest method of incorporation of international norms; the referendum.

In the light of the aforementioned points, returning to the question of the EAEU norms incorporation, the Constitution Court of Armenia provides meaningful niceties on the interrelation between the EAEU and Armenia's domestic legal systems. The Court held that in the legal acts of any supranational body, there is the will of the nation in the mandate that has been transferred when joining an international treaty (*SDO-1175,* 2014, para. 6-7). Meanwhile, the Court similarly evaluate that for direct applicability of decisions of the supranational body, there are four preconditions; "1) the guarantee of state, peoples and national sovereignty, 2) equality and mutually beneficial international relations, 3) proportionality of possible restrictions of human rights to the norms and principles of international law, 4) the application of decisions of supranational bodies in compliance with the Constitution of RA" (*ibid*; para. 7). The first two preconditions are, in some sense, anti-integrationist. The Court's decision, containing such vogue concepts as national and peoples sovereignty, provides itself excessive discretion to block the direct application of the EAEU supranational norms, obstructing the Eurasian integration. The third point on human rights is also a fascinating interpretation. Decisions of a supranational body can also foresee higher standards of human rights protection, more than constitutions do. Yet Court's attitude toward such instances remained unanswered. The fourth point demonstrates the place of supranational law in the domestic legal pyramid. It is under the Constitution of the Republic but above ordinary legislation. However, an issue can emerge in relation to constitutional laws,

which are above ordinary legislation.

Subsequently, the process of incorporation of supranational acts into the domestic legal system is the next paramount interrogative. The Constitutional Court, referencing the law on international treaties (that version was expired on 9 April 2018), held that the decisions of the EAEU bodies acquire direct applicability in the territory of Armenia according to the provisions of the law on international treaties. The former law on international treaties stipulated that incorporating a decision of a body of international organisation shall be completed by respective public authority via adopting normative acts, governmental decrees, or without such measures (*SDO-1175*, 2014, para. 10). The Constitutional Court forget that the EAEU Commission's decisions are directly applicable in the territories of Member States (Regulation EEC, 2015; p.13), and no implementing measure can be anticipated by domestic legislation.

Nevertheless, the current law on international treaties does not regulate the question of implementation of decisions of bodies of international organisations. The matter is regulated by the Law on normative acts of the RA. Article 24 of the Law stipulates that " (1) after the adoption of normative acts by the EAEU Commission, if the legal relationship is a subject of legislation of the RA, then the government acts with a legislative proposal, (2) in cases, other than stipulated in part 1 of this article, the government implements the decision of the EAEU Commission through its normative act" (*HH Orenqy Normativ Iravakan Akteri Masin*, 2018; art. 24). Once again, the current domestic legislation undermines the direct applicability of decisions of EAEU acts, opting for traditional means of incorporation of international legal acts, which signify that the domestic legislation of Armenia does not differentiate EAEU acts from other acts of international bodies substantially. Armenian scholars have also been indeterminate to these matters on how the norms of the EAEU should be incorporated in the domestic legislation and how the interrelation between international, Eurasian, and domestic legal system is constructed. That is why they also assess this question only from the traditional dichotomy of monism v. dualism (Simonyan, 2018), undermining the specific role of the supranational-Eurasian legal order.

Overall, although the Constitutional Court of Armenia has highlighted the "*sui*

generis" role of Eurasian supranational legal order in the domestic legal system of Armenia, it still constructs its reasonings through existing theoretical foundations of general international law. Consequently, Armenia's legislation also treats the decisions of the EAEU bodies as other acts of international law. One central point should be highlighted maybe for all the states of the Eurasian Union. They all, employing the concept of supranationality, repeatedly make articulations that are systematically desperate from the reasonings of their European counterparts. Their observations are usually reinforced through the traditional concepts such as sovereignty, equality of states, and consensual decisions making, qualities that are incompatible with the European theory of supranationalism.

3.1.2 Belarus

Belarus also constructed a monist domestic legal system. Its law on international treaties stipulates that the norms of international treaties are directly applicable within the territory of the Republic of Belarus [hereafter RB] (*Zakon RB o mezhdunarodnikh dagavorakh*, 2008; art. 36). Since the law on normative acts of the RB does not articulate anything on the EAEU law, Belorussian scholars presumed that the incorporation of the EAEU acts in the domestic legal system of Belarus is fulfilled via the process envisaged in article 116 of the Constitution (Nazarova, 2018; 196-199). Article 116 of the Constitution, which enumerates the instances of constitutional oversight, affirm that the Constitutional Court delivers judgments on “conformity of acts of interstate formations to which the RB is a party, of edicts of the President of the RB issued to the execution of the law with the Constitution, international legal acts ratified by the RB, laws, and decrees” (Constitution of Belarus, 2018; art. 116). Within this provision, the acts of interstate formation are presumed to have the same legal meaning as acts of supranational bodies (e.g., the EAEU) (Vasilevitch, 2018; 94).

The law on international treaties envisages the methods of incorporation of the EAEU

Commissions acts in the Belarusian legal system. Article 37 of the law on international treaties stipulates that "the President, the National Assembly, the Council of Ministers and the heads of the governmental bodies, departments of a State organ…within their competencies adopt measures to ensure the implementation of international treaties of the RB by taking appropriate decisions" (*Zakon RB o mezhdunarodnikh dagavorakh*, 2008; art. 37). In practice, it is the Council of Ministers and other authorised bodies that, via the adoption of resolutions, create legal frameworks to implement the EAEU bodies' decisions (Dovgan, 2019; 387).

Regarding the placement of the EAEU norms in the domestic pyramid of the Belorussian legal system, the legislation of Belarus does not differentiate the status of the EAEU acts from other international legal norms. Accordingly, this legal issue engendered interesting reasonings at a scholarly level in recent years. Scholars particularly advocate that considering the general logic of Belarusian legislation, the EAEU acts have higher status than ordinary legislation but are under the constitution of the legal pyramid of the Belarusian legal system (*ibid; 388-389*). Hence, in case of collision between the Commission's decisions and the domestic legislation, it is the former that prevails. Moreover, considering the principle of direct applicability of the EAEU norms, Dovgan claims that in case of contradiction between decisions of the Commission and the national legislation, the former replaces the later, as far as direct applicability by analogy similar to self-executing norms of international treaties (*ibid*). Certainly, these are far-reaching considerations and quite extensively contribute to the progression of Eurasian integration. Nevertheless, it is a matter of political will to restrict state's exclusive control over the regulation of certain matters and transfer the competencies to supranational bodies. Interestingly, Belorussian scholars rarely address the direct applicability of EAEU norms from a human rights perspective. Unlike the European scholars, who repeatedly connect the principle of the direct effect to the respect and protection of human rights, the Belorussian, and probably all Eurasian scholars, treat the legal issue from a technical-formalistic perspective perceiving it as a mere fact that requires legal solutions.

What follows from this analysis that, unlike Armenia's legislation, the domestic legal

system of Belarus does not even factually differentiate the legal acts of EAEU bodies, including the directly applicable decisions of the Commission, from other types of international agreements. Thus, the implementation of the EAEU acts is carried out through traditional means of incorporating international norms. However, at a scholarly level, the question of the direct applicability of EAEU norms gained significant attention, and references to the EU law have been typical for Belorussian legal scholars. One essential fact to be mentioned, regarding Belarus. The EAEU is the first profound interaction of the Belarusian state with a regional or international organisation that extensively shapes the domestic legal system. It is worth remembering that Belarus is neither part of the WTO nor Council of Europe, and, while the Constitutional Court of Armenia, treating the application of EAEU law, made reference points to the country's obligations within the CoE and WTO (*SDO-1175*, 2014; para. 10), Belarus should develop its own path of incorporating legal acts of regional legal order in its domestic legal system. As a result, substantive amendments for its legislation are required if Belarus takes the Eurasian integration seriously.

3.1.3 Kazakhstan

As Armenia and Belarus, Kazakhstan also established a monist legal system. Article 4 of the Constitution of Kazakhstan stipulates that the international treaties are part of "functioning law in the Republic of Kazakhstan" (Constitution of Kazakhstan, 1992; art. 4 (1)). Generally, when it comes to Kazakhstan, the country should be examined more intensely, inasmuch as it was the ex-president of Kazakstan, *elbasy*, N. Nazarbayev, who proposed the institutionalisation of the idea of Eurasian integration back in 1994. It should trigger particular attention to how the Eurasian integration has been legally evolving *vis-à-vis* Kazakhstani domestic legal order since the future of the organisation can be straightened effectively through legal means. Hence, intuitively, Kazakstan should have pushed forward more supranationality. Yet, in reality, it is the one that opposes the politicisation of Eurasian integration vigorously.

Concerning the place of the EAEU Commission's decisions in the legal system of the Republic of Kazakhstan, Constitutional Council's 2009 decision, on the official interpretation of article 4 of the Constitution of the Republic of Kazakhstan about the procedure on the execution of decisions of international organisations and their bodies, provides straightforward observations (*Normativnoe posstanovlenie Konstitutsionnovo Sovieta Respubliki Kazakhstan*, 2009). In practice, the Constitutional Council addressed the question regarding the decisions of the *EurAsEc* Commission, which was replaced with the EAEU Commission by the TEAEU. Nevertheless, since the TEAEU foresee a legal succession of legal acts [decisions] of the *EurAsEc* Commission and EAEU Commission (TEAEU, 2015; art. 99(2,3)), and given that the nature of the Constitutional Council's decision has a general rather than special target, reasonings of the Council are fully applicable on the legal acts of the EAEU Commission.

First, the Constitutional Council held that the decisions of the Commission (EurAsEc) should be perceived under article 4 of the Constitutions (*Normativnoe postanovlenie Konstitutsionnovo Sovieta Respubliki Kazakhstan*, 2009; para. 4). The Court then continues that in case of contradiction between the Commission's binding decision and the national legislation of Kazakhstan, the legal norms of the Commission shall prevail (*ibid*). While, at present, the stance of the Council can be regarded as trivial for more profoundly regulated TEAEU, it still fundamentally represents Council percipience of supranational norms.

The Council also provides essential interpretation over the process of incorporation of international norms. The Council held that "the procedure, for taking a binding decision on Kazakhstan by an international organisation or its body, should provide legal guarantees" (*ibid*). According to the decision, these guarantees "eliminate the degradation of the will of Kazakhstani people to join in an international treaty, which is reflected in a referendum, in the acts of president or parliament, during the conclusion and ratification of a treaty" (*ibid*). The Council foregrounds that one of such guarantees is the consensual decision making and the process of revision and alteration of Commission's acts by supreme bodies of the Community (*ibid*). These interpretations prompt some ambiguity regarding the implementation of the EAEU Commission's

decision. The Council conditioned the incorporation of decisions of a supranational body upon the will of the people. First, there was no nationwide referendum for Kazakhstan's accession to the EAEU, although it is a conventional procedure for membership in such organisations. Second, the term "will of the people" gives significant discretion to the Constitutional Council to block the implementation of any supranational normative act. Finally, the judgement clearly indicates that Kazakhstan regards the Eurasian integration merely from an intergovernmental turn since the consensual decision-making and institutional hierarchy of the EAEU are perceived qualities that straighten the sovereignty of Kazakhstan, rather obstacles for the advancement of the Eurasian integration. Therefore, from one aspect, the Constitutional Council empowers Commission's [*EurAsEc*, EAEU] supranational regulation but, from another perspective, establishes constitutional supervision that hinders any deep integration prospect.

Furthermore, the Council also ruled that "in case of collision between the Commission's decisions and the domestic legislation of Kazakhstan, the former shall prevail' (*Normativnoe postanovlenie Konstitutsionnovo Sovieta Respubliki Kazakhstan*, 2009; para. 4). In a similar vein, the Supreme Court of Kazakhstan, in its 2019 decision, pronounced a vital exclusion, stipulating that "the decisions of the Commission that infringe the constitutional rights of man and the citizens, do not have priority over the normative legal acts of the Republic of Kazakhstan" (*Normativnoye pastanavlenie Verkhovnovo Suda Respubliki Kazakhstan*, 2019). This interpretation has decisive implications for the incorporation of the EAEU acts. First, it grants the Constitutional Council the right to supervise the decisions of the EAEU Commission (according to article 73, Constitution of Kazakhstan). Subsequently, the exclusion of preliminary rulings at the EAEU significantly expands the discretion of the Constitutional Council to eliminate any decision of a supranational body without focus on the mechanism of supranational adjudication.

In contrast, Kazakhstani scholars are more integrationist in their interpretations of supranational decision-making. They suggest that the decisions of the EAEU Commission per definition are comparable with the regulations of the European Union

(Daulenov, Irzhanov, Oralova, 2015; 100). In reality, alike reasoning requires a pro-integrationist turn by the State, which Kazakhstan lacks presently. Illustrating the direct effect and supremacy of the EU regulations, scholars maintain that such deliberation ameliorates the implementation of the EAEU decisions in the domestic legal system of Kazakhstan (*ibid*).

On these grounds, the existing positions generate conflicting conclusions. While academic circles attempt to illustrate the Eurasian integration under the layers of European conceptualisation of a supranational legal order, state bodies, particularly high courts, remain more protectionist and perceive the decisions of the EAEU Commission as other international obligations.

3.1.4 Kyrgyzstan

Article 6 of the Constitution of the Republic of Kyrgyzstan define that international treaties, universality recognised principles, and norms of international law are a constitutive part of the Kyrgyz legal system (Constitution of Kyrgyz Republic, 2010; art. 6(3)). The constitutional provision demonstrates that similar to other post-Soviet states, Kyrgyzstan also has adopted a monist approach. Nevertheless, the law on normative acts of the Kyrgyz Republic does not enumerate the EAEU Commission's acts in the domestic legal system of Kyrgyzstan, incorporating the decisions through the traditional monist technique. Therefore, the regulation of the implementation of the EAEU acts should be observed under the law on international agreements of the Republic of Kyrgyzstan. Article 18 stipulates that the treaties not requiring ratification are subject to "approval by the Government in the form of a resolution" (*Zakon Kirgizkoy Respubliki*, 2014; art. 18). Article 18 stipulates that it is the governmental bodies that take appropriate measures for the implementation of international treaties (*ibid*, 18 (1)). However, how exactly the Kyrgyz law places the EAEU norms in its domestic legal systems remain an open question for international law. The Kyrgyz

scholars are entirely correct when proposing a significant amount of amendments to modify Kyrgyz law on international agreements, endeavouring smooth regulation of interrelation between international and domestic laws (Nurmatov, 2015).

Obviously, having direct applicability, the EAEU Commission acts do not require domestically normative legal measures to be implemented. However, considering that Kyrgyzstan is relatively inexperienced in dealing with the acts of supranational bodies, it is mandatory to foresee the legal mechanism to more straightforwardly implement the EAEU Commission's decisions. Certainly, a functioning supranational regulatory body and a functioning Court are new phenomenons for the Kyrgyzstani legal system. Therefore, essential amendments to the Kyrgyz law are presumed if the Eurasian legal system intent to escape the fate of remaining post-Soviet regional organisations.

3.1.5 Russia

Among the Member States of the EAEU, how Russia reviews the decisions of international bodies generally and the decisions of the EAEU institutions particularly has the most decisive significance. That is because Russia is the motor of Eurasian integration, and how it legally perceives the Eurasian legal order determines the fate and nature of Eurasian integration in post-Soviet Eurasia. The Russian leadership in post-Soviet Eurasia adds additional vocation to Russian approaches to international law. It can consolidate the post-Soviet Eurasian states around its own approaches to international law, and in this turn, the EAEU is the most advanced institutional channel for such consolidation. Although this thesis does not seek to treat the question of consolidation, it highlights significant points of Russian approaches to international law to examine the direct applicability of the EAEU norms.

According to article 15 of the Constitution of the Russian Federation, international treaties, universally recognised principles, and norms are a constituent part of the Russian legal system (*Konstitutsia Rossiskoy Federatsii*, 1993; art. 15(4)). In case of

conflict between the international agreement and domestic legislation, the former prevails (*ibid*). The provision confirms that Russia is a monist state where international law is an integral part of the Russian domestic legal system. However, 2020 Constitutional amendments added a new consequential provision, and although it can be regarded as a result of a long-lasted contradiction between the ECtHR and the Russian Constitutional Court, it has general applicability and also regulates the legal relations of Russia within post-Soviet regional organisations, particularly the EAEU. The amended Constitution stipulates that;

> "the Russian Federation in conformity with relevant treaties may participate in international associations and delegate to them part of its powers if this does not limit the rights and freedoms of the individual and the citizen or contradict the fundamentals of the constitutional system of the Russian Federation. Decisions of interstate (or intergovernmental) bodies, adopted on the basis of provisions of international treaties of the Russian Federation, were construed in a manner contrary to the Constitution of the Russian Federation, shall not be subject to enforcement in the Russian Federation" (*Konstitutsia Rossiskoy Federatsii*, 1993; art. 79).

Indeed, the amended provision has been the constitutionalisation of the reasonings of the CC of the RF on the enforceability of judgments of ECtHR (Mälksoo, 2021; 87-88). Nevertheless, the amendment has general applicability and includes not only the CoE but also other international arrangements, including the EAEU. Two noticeable points should be highlighted in this respect. First, the amended provisions speak about "decisions of interstate (intergovernmental) bodies'. Thus, these are not only the interstate (or supranational) courts but all other interstate bodies that take decisions. In this vein, it is remarkable that the Russian Constitutional Court perceives the EAEU Commission as an interstate rather than a supranational institution (*Opredelenie Kons. Suda NO 588-O*, 2020). Accordingly, the decision of the Eurasian Commission can be subject to constitutional supervision by the Russian CC. In reality, the Russian CC, back in 2015, concerning the Commission of *EurAsEc*, already confirmed that "Russian Federation, having state sovereignty but in parallel being a member of the international

community, can participate in international unions and transfer them part of its competences in conformity with international treaties, if it does not entails restrictions on rights and freedoms of man and the citizen and does not contradict to the main constitutional order of the Russian Federation…", and continued, "… Russia's participation in Customs Union does not form any premise to derogate from the principle of supremacy of Constitution of the RF" (*Opridelenie Konst, Suda* N 417-O, 2015, para.2).

The decisions of Constitutional Courts and last constitutional amendments brought new restrictions for the legal advancement of the EAEU. If Russia is undertaking supervision over the decisions of the Eurasian Commission, it is unconvincing to think about the triumph of supranationality in the EAEU within its European conceptualisation. Yet, if we return to the idea of authoritarian supranationalism, through informal pressures, Russia can enjoy its first among equals policy in post-Soviet Eurasia.

Regarding the status of interstate bodies' decisions in the domestic legal system of Russia, the reasonings of the Court would not be a Gordian knot if there were not cases, like *Yukos*, when a decision of an interstate [supranational] body has been recognised unconstitutional, solely, for political purposes. Therefore, it is the politicisation of constitutional supervision that challenges the enforceability of international (supranational) organisations' decisions rather than the process itself.

Finally, since the EAEU is Russia's own regional project, the probability is high that Russia should be more active in constructing legal order in post-Soviet Eurasia than the other Member States. The "death" of CIS, and the presence of the European Union in the Western part of post-Soviet Eurasia, do not give any choice to Russia to fail consolidation of post-Soviet Eurasian states around Russian approaches to international law. In all other cases, at least, in the Eastern neighbourhood of the EU, the transposition of the EU's legal *acquis* to the domestic legal system of post-Soviet countries further alienate them from the Russian illiberal approach to international law. Therefore, such a legal consolidation is not only a phenomenon for research but also a political reality. In this regard, the direct applicability of the EAEU norms is the most valuable method to consolidate the states without any political pressure.

3.1.6 Conclusion on states

What follows from the above mentioned analysis is that although all the EAEU Member States are generally monist countries, they have significantly different approaches toward normative acts of the EAEU. A modicum of states differentiates the incorporation of decisions of supranational and international bodies, yet some of them do not. However, almost all the countries place the decisions of the EAEU under the constitutional supervision of their domestic Constitutional judiciaries. This constitutional supervision is truly an anti-integrationist phenomena, especially for the EAEU. That is because the non-existence of preliminary rulings results in a high probability of desperate interpretation of the Commission's decisions by different Constitutional Courts. This phenomena incontestably provokes additional obstacles for deeper integration. Nonetheless, the problems regarding the direct applicability of the EAEU decisions are not solely connected to domestic issues. It foremost has theoretical foundations, and it targets the question of statist v. individualist approaches to international law, a phenomenon that the next part of this chapter attempts to analyse.

3.2 Direct effect, statism v. individualism; Russian and European approaches to international law

The principle of the direct effect of international [supranational] norms is not solely a legal-procedural issue of the monism v. dualism dichotomy. Overall, at least in the Eurasian space, such a question should not have raised since there is no purely dualist country. The real problem is hidden in the different approaches to international law that post-Soviet Eurasia and Europe have regarding the evolution of international law. The first is about the statism v. individualism conundrum, and the second is democracy v. authoritarianism enigma. For this purpose, this part of the chapter requires a thorough

analysis of Russian [Eurasian] approaches to international law in comparison with the EU law. Then, via empirical illustration of the EU and EAEU case law, the theoretical variability of European and Eurasian approaches to regional integration is illustrated.

3.2.1 Statism v. individualism

Regarding this particular dichotomy, from the beginning, it is a requisite to emphasis that there is no extensive research, which claims that the post-Soviet Eurasian states as a regional group share the same statist understanding of international law. However, the fact that one of the distinctive features of Russian approaches to international law is its statist understanding of international law (Mälksoo, 2015; 98-140) gives the background to consider that the Eurasian integration should have been constructed on the Russian approaches to international law. That is because, throughout this research, the claim was that Russian understanding shapes the Eurasian integration; it is not an exception in this case.

Scholars in Europe, appraising the interrelation of the European law with the domestic legal systems of Member States, argue that the question of the interrelation of these two legal orders should be in line with the new realities that international law faces. It is mainly about the erosion of statist approaches to international law and the gradual inclusion of individuals in the subjects of international law (Besson, 2008; 51; Ziegler, 2015; 2). Notwithstanding, such a claim cannot be definitive in a global sense, especially if considered through the lens of comparative international law. The changing nature of international law has not, indeed, gained a universal vocation, and it is perhaps authoritative to claim that it is only the Western approaches to international law that have had this pro-individualistic adjustment. Meanwhile, in some parts of the world, it receives strong rejection directly or indirectly.

The post-Soviet Eurasia is not only a place of rejection of the new individualistic approach to international law, but it is a group of states that inherited the Soviet doctrine

of international law, which is far from *jus publicum Europaeum*. Objectively, the centre of this rejection of pro-individual approaches to international law is in Russia. After the USSR's dissolution, the competition between statist and pro-individual schools has appeared in the Russian academic discourse (Mälksoo, 2015; 98-100). However, even if the freedom that came with the dissolution of the USSR, Russia's civilisational distinctiveness tilt the scale in favour of statist approaches to international law, and Russia's state practice is a shred of extraordinary evidence for it (Mälksoo, 2016). Incidentally, what is the content of this contradiction? Foremost, the statist school relies heavily on absolute state sovereignty and dismisses any constitutionalisation of international law (Mälksoo, 2015; 100-104). Secondly, it is about the rejection of individuals' inclusion in the subjects of international law (*ibid*; 104-110).

Both qualities shape Russian behaviour in the international scene. Yet the question remains if Russia behaves similarly in its zone of privileged interest and how exactly Russia shapes Eurasian integration under the theoretical lens of authoritarian supranationalism and statist approaches to international law.

This particular approach has a major influence over the direct effect of the EAEU norms, as in its European approach, the principle of direct effect has been evolved to protect human rights. In a way, the direct effect probably is the most prominent example of how individuals become part of subjects of international law inasmuch as the principle allows individuals to seek protection at the international [European] level, in their own right and initiation. And that is why the direct effect of the EAEU norms should be the target of observation.

Nevertheless, before passing to the question of how the EAEU Court assesses the direct effect of the Eurasian law, it is pre-eminent to highlight the disparate role of democracy in Eurasian and European integration. Indeed, the Russian approach to international law is illiberal; however, illiberal does not necessarily mean undemocratic, and although Russia is not an illiberal democracy, the democratic principle plays a decisive role in any integration, including the post-Soviet authoritarian regionalism.

3.2.2 From democratic deficit to authoritarian supranationalism

When the ECJ pushed forward the principle of supremacy of Community law (Costa v E.N.E.L, 1964), the reactions of Member States' constitutional courts were too conservative to protect the constitutions. The *Solange* I decision of the German *Bundesverfassungsgericht* was one of the first strong opposition to supremacy of the Community law. The German Constitutional Court held that;

> "….the part of the Basic Law dealing with fundamental rights is an inalienable, essential feature of the valid Basic Law of the Federal Republic of Germany and one which forms part of the constitutional structure of the Basic Law. Article 24 of the Basic Law does not without reservation allow it to be subjected to qualifications. In this, the present state of integration of the Community is of crucial importance. The Community still lacks a democratically legitimate parliament directly elected by general suffrage which possesses legislative powers and to which the Community organs empowered to legislate are fully responsible on a political level…" (*Solange* I, 1974)

The German case was indeed an attempt to establish constitutional review over Community norms. Thereafter, in the *Solange* II case, the *Bundesverfassungsgericht* retrieved and abandoned the idea of constitutional supervision (*Solange* II, 1986). However, the German Constitutional Court still revealed an important aspect. The supremacy of the EU law has in constant determination with the democratisation of Community [EU] institutions. Meaning that the more democratic they are, the fewer national constitutional courts can resist the supremacy of the EU/Community law. Therefore, it is not the principle of absolute sovereignty that prevailed, but the democracy as a principle of institution-building for constitutionalisation of the EU law.

The question of the democratic deficit of the EU institutions goes beyond the German case. However, without going further, it is evident that the democratic deficit is a challenge for the EU law, coming from national constitutional courts to restrict further the supremacy of the EU law over the domestic legal system.

The case is entirely different in the EAEU. First, the EAEU does not possess any democratically elected parliament. Nevertheless, even if there is no democratically elected body of the Union, both the Constitutional Courts of the EAEU Member States and the academic community are indeterminate to the prosperity of authoritarian supranationalism. Instead of proposing democratic constraints for supranational decision-making, the Constitutional Courts and academic community propose diametrically different perspectives of supervision of decisions of a supranational body of the Union. It is foremost the mechanism of cancelation and amendment of the EAEU Commission's decisions by higher institutions of the Union.

The Constitutional Court of Armenia reasoned that the consensual decision making, the rotation of presidency in the highest bodies of the Union, and a possibility to appeal the decisions of all other bodies' [deliberately meaning Collegium] decisions in the highest bodies of the Union, further strengthen the role of state sovereignty (*SDO-1175*, 2014). The Russian attitude of state sovereignty and recent constitutional amendment approve the same reasoning. Undoubtedly, the Central Asian Republics share the same understanding, as they are the ones that bear the responsibility of rejection of the EAEU parliament (Karr, 2020).

Then, if the EAEU is functioning on authoritarian supranationalism and the democracy is not an operating principle of integration and since individuals are not part of subjects of international law, how has the direct effect as a principle shaped in the EAEU? This question is the matter of the final part of this chapter, and it involves a comparison of the EU and EAEU case law.

3.3 Direct effect as a principle; European and Eurasian approaches

Ultimately, the core question on the interrelation between supranational and domestic legal orders is the principle of the direct effect of supranational legal acts. However, the

construction of such a principle has different reasonings behind it in different regional organisations. The institutional structure of a regional union, the attitude towards sovereignty, the principle of democracy, and, most importantly, the treatment of individuals as subject of international law are the main points upon which supranational courts generally construct the meaning of the direct effect principle. For this purpose, this part of the chapter compares two cases. The *van Gend en Loos* case of the ECJ and EAEU Court 2017 advisory opinion on the direct applicability of the EAEU law.

Before embarking to treat how the two courts constructed the legal basis of the direct effect, there is a need to define the principle to avoid misinterpretations. As far as the concept has been shaped in the European milieu, the definition is based on EU law. In general terms, "it means that provisions of binding EU law that are sufficiently clear, precise, and unconditional to be considered justiciable can be invoked and relied on by individuals before national courts" (Craig & de Búrca, 2020c; 217-220). This definition has been shaped through the EU case law, yet the classical meaning is much narrower, "which is defined in terms of the capacity of a provision of EU law to confer rights on individuals" (*ibid*). For this research, the classical concept is the baseline. It would be naive to think that the concept, which has been shaped in Europe during a couple of decades, possesses the same implication for a newcomer as the EAEU, which has only six years of life span at the time of writing this work.

3.3.1 The case of *van Gend en Loos* and direct effect

In the case, the Netherlands administrative tribunal through preliminary ruling referenced the matter to the ECJ on the question “whether Article 12 of the EEC Treaty has direct application within the territory of a Member State; in other words, whether nationals of such a State can, on the basis of the Article in question, lay claim to individual rights which the courts must protect?” (Van Gend en Loos v Administratie der Belastingen, 1962).

Without thorough consideration of the reasonings of the parties to the dispute, subsuming the observations by the Dutch, German and Belgian governments, it was apparent that the question of the direct effect of the EU norms has gained considerable resistance among the Member States (*ibid*).

However, the Court ruled that the article in question has a direct effect and the courts reasoning on the matter are highly illustrative.

The Court held that;

> " the objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. Furthermore, it must be noted that the nationals of the states brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee" (*ibid*).

From this observation, two particularly substantive points should be underlined. Primary, for the Court, the Community is not a simple intergovernmental legal arrangement between states. It also involves peoples and gives them rights and obligations. In this regard, the reasoning is genuinely opposed to the idea of absolute state sovereignty. It brings peoples to the forum of international law, which is veritably anti-Westphalian behaviour, but logically in light of contemporary Western approaches to international law. Second, the Court emphasised the role of the European Parliament and Economic and Social Committee. The emphasis was not accidental inasmuch as it precisely demonstrates the role of democracy in the Community and proves that the existence of democratic institutions is a precondition for the direct effect of Community norms.

The next highly important observation and probably groundbreaking one is Court's reasoning that;

> "the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage" (*ibid*).

The Court, thus, approved the *sui generis* nature of the Community as a new legal order of international law. Interestingly, for the Court, the Community is still an international legal order, which ultimately means the application of international legal principles and norms. However, the Court attached new contours to this *sui generis* legal order. This novelty is the transfer of sovereignty to community institutions that can produce laws that confer rights to individuals. It was indeed reinforcement of the Western approaches to international law, contributing to the inclusion of individuals in the subjects of international law.

Taken together, the Court's reasoning demonstrates the special nature of the European legal order. It functions through democratic institutions, and since the states transferred the sovereign rights to the Community institutions, the Community not only imposes obligations on individuals but also directly grants them rights through supranational norms. The question remains how the EAEU Court comprehends the direct applicability of supranational norms.

3.3.2 April 2017 Decision and direct applicability of EAEU norms

The EAEU Court, in its April 2017 advisory opinion, provided its clarification on the division of competencies between the Union and the Member States on matters of competition. Remarkably, the *judge rapporteur* of the case was T. Neshatayeva, a legal

scholar whom this thesis has referenced quite extensively since she is a well-known legal advocate of Eurasian integration. Although collegiality is the method of decision-making at the EAEU Court, the role of *judge rapporteur* always has particular significance when it comes to legal reasoning.

As mentioned earlier, the Court differentiates three types of competencies; common, coordinated, and agreed. The Court reasoned that by virtue of the transfer of competencies to Union's bodies, the modus operandi of common policies is the supranational regulation (*Konsul'tativnoe zakluchenie,* 2017). Accordingly, only common policies have the supranational vocation since the Member States transferred their competencies in that field to the institutions of the Union. Meanwhile, in the sphere of agreed and coordinated policies, the Member States reserve their right to legislate.

Then the Court, highlighting that Union's competition law includes all three types of policies, held that "common rules of competition have direct applicability and should be applied by the Member States as norms of an international treaty" (*ibid*).

Indeed, the reasoning of the Court, unlike the case of *van Gend en Loos*, has been a static interpretation of an international treaty. Unfortunately, the Court escaped demonstrating a sign of judicial activism to justify why the EAEU norms are empowered to have direct applicability in the territories of the Member States and, finally, what such direct applicability signifies for individuals residing in the territory of the EAEU.

The Court in later decisions also approved that;

> "the Members States are obliged to abstain adopting domestic legal acts, to the contrary of the Law of the Union, in regard questions transferred to supranational regulation" (*Kansultativnoe zakluchenie,* 2019a; 5).

then it added:

> "Thus, in the field of competition, any action of the bodies of Member states, including an action for adoption domestic legal acts, should be in line with the law of the Union. In the field of competition, in case of collision between

clauses of the Union law and the domestic norms, the former shall prevail" (*ibid*).

The reasonings include some type of judicial activism and adds new contours to the direct applicability of the EAEU norms. However, the Court still lacks any reasoning on why the norms of the Union should be directly applied and what are the benefits of such direct applicability for the people living under Eurasian jurisdiction. This shortcoming is probably the main reason why the Court, in numerous cases, accepts that the Union bodies and domestic institutions can act simultaneously, fixing only a few criteria for the division of competencies. Hence, this lack of coherence is one of the principal procedural shortcomings of the Eurasian integration.

Finally, does the EAEU law provide legal ground to the EAEU Court to reason similarly as the ECJ did in the case of *van Gend en Loos*? If the EAEU Court had the opportunity to conduct judicial activism, then the answer would be positive.

First, similar to Treaty on Establishing the European Economic Community (TEE), the TEAEU also refers to the cooperation of people. Particularly, it stipulates that "seeking to strengthen the solidarity and cooperation between their peoples while respecting their history, culture, and traditions" is one of the reasons of Eurasian integration (TEAEU, 2015; preamble). Unquestionably, this provision is not similar to the idea enshrined in the TEE, but it would not raise any question if the Court sought judicial activism. After all, the ECJ also did not elaborate on what did a community of people mean? Secondly, accepting that the transfer of competencies to the supranational level has occurred, the EAEU Court could easily accept that the Union is a new legal order of international law, highlighting the role of restriction of sovereignty. Nevertheless, it has chosen a different path of interpretation, escaping pro-individualistic interpretation of the EAEU law. In general, a researcher can have an attitude that in post-Soviet Eurasia, all institutions and individuals are aware that the TEAEU has restricted Member State's sovereignty, but they fear to voice it.

However, the Court also could face some shortcomings if it pronounced that the EAEU norms have direct effect, similar to the EU law. Primary, even if a democratic component is less important for the Eurasian integration, it still can be a solid basis to

empower Union institutionally. Yet as there is no democratic decision-making at the EAEU level, it considerably restricts the supranational momentum, even if regarded through the lens of its theoretical framework of authoritarian supranationalism. Finally, the exclusion of individuals to plead to the EAEU Court undermines the Court's authority to rule that individuals can invoke the Union's law in their national courts.

3.3.3 What kind of direct effect for Eurasian norms?

Thereupon, the EAEU Court has not fully developed the idea of direct effect opting for statist approach to international law. The EAEU institutions pronounce about the direct applicability of competition law but escape to rule what such direct applicability means for individuals. Indeed, the constraints that the TEAEU engendered for the Court's judicial activism has a crucial role in developing such concept as direct effect and the supremacy of regional law. However, it is also doubtful that the Court itself is ready for judicial activism. It seems that the EAEU Court’s judges prefer static interpretation over judicial activism, escaping to deepen the integration processes. Simultaneously, the Collegium also does not push forward any advancement on the matter of direct applicability or enforceability of the Union's decisions.

In the end, the EAEU carries out its activities based on the principle of "respect for the universally recognised principles of international law," and the protection of human rights remain within the theoretical boundaries of how post-Soviet Eurasian countries approach international human rights law, which is indeed is different from the approaches of the EU law.

Conclusion

The dissolution of the Soviet Union, which marked the "end of the history" (Fukuyama, 1992), further strengthened the idea of the universality of international law, inasmuch as one of the main challenges to this universality, the USSR (Wilk, 1951), ceased to exist. However, profound regionalisation and the foundation of different regional orders in the post-Cold War era come to reincarnate these challenges against such universality.

In this respect, not the European, but especially non-Western, including the Eurasian, regionalisation can have this power to seriously question this universality and contribute to the regional fragmentation of international law. That is because also that even if the EU law sometimes indirectly challenges the universal understanding of international law (Kadi v Council of the EU, 2008), it still inherent the idea of global regulatory power (Scott, 2014; 87-88), in some respect, seeing itself as the owner of the universal international law.

The Eurasian Union, the most institutionalised regional organisation in post-Soviet Eurasia, has all the capabilities to contribute to the fragmentation of international law. It does not necessarily mean that the EAEU does not opt for the universality of international law. It is still founded based on articles XXIV of GATT as a more profound form of economic integration. The TEAEU still "reaffirms [Member States] commitments to the purposes and principles of the Charter of the United Nations, and other generally accepted principles and norms of international law" (TEAEU, preamble). However, what challenges the universality of international law, is the interpretation of concepts by the EAEU institutions and the Member States. What Mälksoo conceptualises as "Russian approaches to international law" have the potentiality to turn into " post-Soviet Eurasian approaches to international law," and there are some initial grounds for that, as this thesis illustrated.

First, the EAEU as a regional legal order functions through different conceptual frameworks. The historical-legal analysis of the Post-Soviet space validates that the concepts shaped in the Eurasian milieu have been significantly affected by Russian

great powerness, hierarchal relationship and decision-making, statist approaches to international law, absolute sovereignty, and informal practices. The EAEU as an authoritarian supranational legal entity has been constructed through this paradox of contradiction of western and post-Soviet Eurasian approaches to international law. From one side, the EAEU law affirms the willingness of Member States to transfer sovereign competencies to supranational regulation, but from another perspective, the Union law establishes an institutional framework that functions through a top-down mechanism based on the informal practices and principle of absolute sovereignty. That is why the EAEU is out from the intergovernmentalism v. supranationalism dichotomy; it is an authoritarian supranational legal order.

This conceptual standpoint also shapes the functioning of its institutions. The absence of a particular conceptual framework has been a significant reason why courts, scholars, legal practitioners were searching for supranational institutions. Using European concepts of supranationality, they misleadingly assign a supranational character from Supreme Council to the EAEU Court. In short, a common approach lacked when the question of the EAEU institutional law has been raised. The Collegium and the EAEU Court indeed has supranational character, but they are functioning under a different conceptual understanding of supranationalism. That is not necessarily a dysfunctionality if regarded outside the western conceptualisation of regional integration. Instead, analysis demonstrates that the EAEU institutions have been shaped through their own perception of decision-making, which forms the conceptual background of authoritarian supranationalism.

Regarding the capability of the EAEU to develop regional international norms, it is worth mentioning that the direct applicability of the EAEU norms also functions in its own terms. The EAEU law stipulates that the competition rules have direct applicability, but it avoids granting rights to individuals, one more time emphasising how statist approach to international law anchored in post-Soviet Eurasia. The TEAEU gives a right to the economic entities to plead to the EAEU Court. From marginal assessment, this is a positive development since individuals who conduct business activity acquire supranationally protected rights. However, even under this configuration, the statist

approach is visible. Russian, Belarusian, Kazakh economies[4] are particularly affected by state involvement. These are countries where the protection of economic entities, to some extent, is similar to the protection of states as far as formally or informally State is involved in many economic entities. Thus, the right of economic entities to plead to the EAEU Court should be regarded through this particular situation. At the end of the day, a supranational judicial body's decision is not a guarantee that it will be enforced by the EAEU Member States, as recent Russian Constitutional amendments demonstrated. The EAEU has capabilities to develop norms, but these norms are for states rather than for individuals. Thus, the EAEU's objective, "to create proper conditions for the sustainable economic development of the Member States to improve the living standards of their population" (TEAEU, 2015; art. 4), has not been at least honestly formulated. The EAEU is for states rather than for individuals. It further cements the absolute sovereignty of Member States.

Finally, the concepts and ideas that this thesis pushed forward require further analysis by legal and political scholars. This thesis simply opened pandora's box to assess the EAEU from different conceptual underpinnings, which require more profound and thorough analysis.

[4] Russian State's share in Russian Economy is estimated around 55-70 percent (see, Arshakuni, N., & Yefimova-Trilling, N. (2019). What Is the State's Share in Russia's Economy? | Russia Matters. Retrieved from https://www.russiamatters.org/analysis/what-states-share-russias-economy), Belarus has maintained the course of market socialism with profound characteristics of planned economy and state supervision and control

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Appendixes

Appendix 1. Interview with Professor A. Makarychev from the University of Tartu

A. Simonyan -**What kind of tools do Russian central authorities prefer to construct their relations with post-soviet countries (now part of either EAEU or CSTO (ODKB)); are they legal or informal (political)?**

A. Makarychev- Well, I think the informal tools and mechanisms are, let's say, preferable for the Kremlin and this is a usual way of doing foreign policy most importantly in near abroad. In my view [Russian governments] try to use as much as possible non institutionalised channels of influence, not necessarily going public with that. And the essence of such type of regional integration is different [from] European Union as an integration project , which in view is more institutionalised and much more normative and much more transparent in terms of expectations and dissipations what is needed, what kind of chapters should be close, how many. So, Moscow skip all those technicalities and basically deals with these countries with are members or countries that Moscow wants to see as potential members, more on political grounds, using basically political, non-institutionalised tools of influence. I am telling that all these tools are explicitly or inherently contain a force projection, not necessarily, for example, Moscow can incentivise countries through making promises and investing in certain sectors in local economies. Moscow might be surprisingly cooperative, for example, this is not about Eurasian Economies Union states, but still about neighbours, like from withdrawing military infrastructure in Azerbaijan, or helping Saaksvhili to find common language with Abashidze in Adjaria. So, basically, this looks like political bargaining. The rule of the games is that Moscow often tries to invest something and get double or triple price out of that, basically, political loyalty and some kind of you know direct communication shell. As soon as it fails, Moscow starts using other instruments. That is very complex set of tools that Moscow uses. But I think most of them are political, as far as I see that we are trying to find balance between legal and political dimensions of Eurasian Economic Union's integrative project, I think Moscow basically plays with political cards. Institutional, or let's say legalistic perspective are not strong part of Moscow's foreign policy towards all post-soviet countries. I have given example of trilateral talks that the EU tries to initiate with Moscow, failed in 2014, when Moscow clearly expressing its very aggressive disagreement with cessation agreement in Ukraine, participation in EaP in general, and as a suggestion of good will EU invited Russia to form a kind of triangle and discuss formal issues that might bother Russia. Moscow started to not directly sabotaging these negotiations but trying to ask to much, for example, postponement of Association agreement for ten years or like legal guarantees for all potential loses in Ukraine to which the EU can say one that that we are not banking institution and we can not guarantee your loses. And of course negotiations failed. And I think this is a interesting example of how uncomfortable Moscow feels when the EU tries to offer very formal format of negotiations. Ok put on the table what you are not happy with, and we will see what we can do together but again I think it was not finality politics of Moscow to conduct these negotiations and to get some results. In this sense it is mostly political. Another thing, This political way of dealing with Eurasian project in general, I think escalated quite recently to an argument that I found quite politically explicit and too straightforward, it does not come from government but it was quit well articulated in pro-kremlin think thanks including *Sovet poblichnoy politiki* and Valdai club they also try to play with this argument. What they say is something like, look at these countries who either lost their territories or have problems with controlling these territories, its Moldova, Ukraine and Georgia basically, It is coincidence that none of them are member of EAEU. Well you are free to decide for yourself, but if you look of members of EAEU, in fact their territorial integrity is well protected which basically means that there is a type of thinking In Moscow to more politicise the EAEU project as a project that would guarantee some kind of borders [protection]…

A. Simonyan- **Then what about this contradiction that Kazakhstan wants EAEU to be merely economic?**

A. Makarychev- Well that's true, that remains one of my next points and this also relates to your idea of authoritarian supranationalism, which I found quite interesting, and not incompatible with authoritarian regionalism , which already exist, and I think I have posted some articles and papers on the Moodle when I was teaching a course on post-soviet integration. There is a concept of authoritarian regionalism in academic circles, the key issue is why lets say non-democratic leaders use regionalism which regionally

Appendix 1 (continued)

was a part of liberal international order, if you look at genealogy of regionalism, well defiantly you will find clear roots of liberal concept of international society in which nation states would agree slowly, step by step share their power, it is not only with global institutions but also with regional institutions . That was a part of liberal concept of international order, so the question is why would non liberal actors use pretty much the same instrument? And there are many answers to that. One would be raise the visibility , specially for more marginal more peripheral countries. Another , would be policy legitimation. Look we are doing pretty much the same like germans, Spaniards, others do , there is no much difference allegedly between us.. so its kind of policy legitimation. Of course, some kind of post imperial expectations that Russia might play balancing game its needed and take care of some budgetary issues, which is clearly manifested in the case of Belarusian. In this sense the concept is quite interesting . As I understand what you would try to do with this concept is to stress or underscore this supranational dimension and that is exactly where I see problems . For example, Kazakhstan is a clear sign that the most important of Russia's ally , they would not be happy with any type of political bargaining , including institutional politicisation. so the idea of common or joint parliament is almost dead, although always was like that, no one is interested in replicating those supranational elements that do exist in European Union. Frankly speaking, that is also interesting point that might to be taken into considerations, I think or I can presume that even in Russia itself, this heavy accent on supranational momentum might be kind of problematic and I see at least two reasons for that; one reason is that, well, the whole idea of strong supranationalism might conceptually contradict of the general philosophy of Putin's foreign policy and International system as based on nation states with their sovereignties, borders etc. that also contains some kind of duplicity or ambiguity with regard of the EU and Putin, for example, said that we do take into account the EU's experience but we are ready to rectify some of the mistakes, and I believe that these mistakes are exactly about very strong supranational momentum with which Russia has to face itself. So the Common Foreign and security policy, including sanctions, do work. I mean they are not perfect and they do not calls ,immediate results but the very fact that all the EU member states agree upon and YOU (meaning France) quite recently set sanctions against Russia, is a kind of institutional miracle, even the best friends of Putin, Orban and others, well the finish prime minister who was visiting St Petersburg quite recently, all they voted for sanctions. This is something that Moscow knows and that is what Moscow dislikes defiantly. So, If you dislike the supranational momentum, I mean the coordination that can be used against Russia, so why would you replicate that in your own [project]. That would be a little bit conceptually consistent. I think Moscow have some problems with Putin's too strong emphasis on supranational momentum. And I think another reason is that within, I know it is unconfirmed in terms of deeds, but when it comes to words what I see in headlines of news that Iran is going to ratify all the officiation papers that are need for starting the official procedure of membership. Ok, and then you have other countries, so it will potentially, ok lets looks from wider perspective, the more countries like Iran might potentially be participating in Eurasian Project well less Moscow would be secure about its centrality and ability to impose Moscow centric policies. Imagine, just imagine EAEU with Iran, Turkey, Vietnam, of course it is fantasy, but in that case the broader spectrum of participants we have, some of them are quite strong, the less Moscow would be interested to be out-voted or outfoxed or. Just sideline. Let's say, in one sense, Moscow can potentially portrait or present great success of Eurasian integration, ok we have more and more members, but ultimately that might be very serious trouble for Moscow. And within these conditions strong supranational momentum might make Russia in a position as Germany in EU; Strongest economy, better country that needs to coordinate everything with small members and I do not think Russia would like to. I think at least Russia does not have a record of negotiating with smaller members anything. So in this sense, this supranational supranational momentum, I am just come to back to this idea of authoritarian supranationalism. It does exist. But it exist as a trend and has faced many many limitations

A. Simonyan-**What does Russia's concept of "zones of privileged interests" mean for constructing legal relations with the post-soviet space?**

A. Makarychev- I know how Moscow might be able, capable transforming its economic and security proper into legal arguments. I might mean that ultimately Russia might again be thinking along the lines of not only economic assistant but also guaranteeing … In sense this is a negotiation between group non-liberal politicians that team up together, pull our resources on the condition of that I will protect you in any possible way. I think that might work for those that are not 100 percent sure about its security. I think the best case will be Belarus and frankly speaking I am not sure that Moscow is going to implement this policy to a full extent. Moscow understand that supporting Lukanhesko at whatever cost it takes, might become productive also defining. First of it is costly, second Russia should invest billions

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Belarusian economy, what for? And such Russia is in counter sanctions, it is very important component, it relates to us whether sanctions work or not, I think they work slowly, I think that they to some extent. So in this sense, Belorussia might be a test case for this kind of authoritarian partnership. If Moscow would defiantly indicate that Lukashenko should go and find a replacement for her, well, that might sound very contradictory signals for other people might face something like that I mean Protest in Kyrgyzstan?, So my point is that it is very unlikely that Moscow will protect either economically or militarily all those guys who might have problems with their legitimacy and that would again deprive Moscow… In case of Belarus I think Moscow acts very cautiously alway balancing between if you looked at the media coverage of Belarus even before the august elections and after, it was like 50/50, one half of the information flow was about kind of portraying Lukashenko as weak guy, who is accounting on Russian help, on the other hand there were people telling that look guys we are facing another cooler revolution. This is all about western sanctions. So it is very consistent. It is not consistent right now as the protests are over, but during the protests I think they were elaborating on these options and I thinks it is Moscow pushes Lukanhesko to constitutional reforms and to at least considering an option of terminating his presidency. I think there is very clear message that it is your mess and we are not going to deal with it, so either you do something or we are not intervening. So, coming to your idea of supranationalism, even with Belarus they failed to crate this Union State , which remain on the paper; no common currency, no common institutional structure, it is true symbolic. So even a country who is very loyal to Russia, I mean there is no anti-Russian statement like in Ukraine, and even in this country, Russia could not move forward in seriously integrating economies, seriously integration financial systems, seriously integrating legal systems and What Russia did with this Covid 19, well the closed the border with Belarus, one of the first countries was Belarus. Lukanhesko expresses how you can close the border to your brother, they answered that they can. So basically all these things they might somehow put or place more and more limitations into this supranational expectations

A. Simonyan-**Which has a prevalence in relations between Russia and post-soviet countries; international (regional) law or "zones of influence"? What is the role of regional organisations?**

A. Makarychev- From wider International perspective or ?

A. Simonyan- **From regional perspective. From post-soviet**

A. Makarychev- In that case I have two points. One, I defiantly think that the Eurasian project is a part of Russian sphere of influence thinking, just differently formulated and I think this spheres of influence is very deeply embedded in Russian foreign policy philosophy and this is also related to Russian understanding go great power status, in great power it Is not important of course sustaining the level of well being of population, great power Russia basically means US, Stalin, Churchill , that type of thinking. So Russia should be seriously taken into consideration and invited regardless what happens domestically, in this sense Russia defiantly tries to model its spheres of influence to be able to claim its great power status in a sense as China and India for example. I think China and India might be reference point for Russia. These countries are taken as they are, that is what Russia wants, just take us we are. For that, they need region that would under its direct or indirect control , because they think that without spheres of influence, the idea of great power would collapse. So I think that they connect the great power status and the idea of spheres of influence and in this sense yes it is quite obvious. The second point is that again coming to political interpretation of the Eurasian Economic Union, well I think many pro-Kremlin think thinkers were quite explicit saying that yes that the Eurasian economic Union because a space for those countries who feel either threatened or just uncomfortable in the frameworks of western-centric liberal international order, in which normative power is not just a figure of speech, normative power can be translated into sanctions, and will require others to respect certain principles based on Copenhagen criteria, well even Nato legally is a organisation of democratic countries , I mean it is written there. I think the general philosophy of Moscow is to try unite these countries that might be unhappy with that [normative power]. Well, definitely, Iran considers the Eurasian option not because they are pro-Russian, although they might be but this is not the only reason, I think they simply want to avoid US economic sanctions. I think it is still hypothesis but can be described as illiberal international society.

A. Simonyan- **But then, what kind of role does this supranational organisation plays for managing Russian great powerness?**

Appendix 1 (continued)

A. Makarychev- Well, in one hand there Is Russia who does not have a good record with dealing with supranational institutions, Russia is even weak in multilateralism, I think there is a type of thinking within this collective Kremlin that institutions with a very high level of coordination power up to supranational, because supranational has many versions.I think that very many in Kremlin will say that it is very demanding, it requires too much from us and acting alone might be more effective, look, we are the largest country by territory etc. all these arguments. When Russia was facing really serious issues be it Georgia, Ukraine, Syria, I mean, Russia was acting alone, noting that Russia considers any institution backing from any of its partners when it comes to the annexation of Crimea or the war in Donbas . I think mentally Russia is prepared to act alone and this might transform into a philosophy . I think many of thinkers would defiantly support this idea that Russia is a huge island, very particular and special type of civilisation, which might be true on the one hand , but on the other hand Russia is a post-imperial. So Russia is balancing of being an empire and post-empire. And this duo is competing in collective head of Putin. On the one hand, yes they are imperial, which basically means that their attitudes to Ukraine, Georgia, Armenia, Belarus, Moldova, they have imperial attitudes. In the main time Russia understand the the word empire is quite heavy and I am saying there is some kind of bifurcation , if this post-imperial identity would prevail ultimately this would diminish the supranational momentum, if the imperial identity would get in upper hand that might be some kind of imperial supranationalism, so some of the institutions might be called supranational by form, but by content that would be more imperial.

A. Simonyan- **That what I call authoritarian supranationalism**

A. Makarychev- yes exactly, so I think this is result of very unsettled identity of Russia., Russia does not have a single policy , Russia is very uncertain when it comes to specific cases, like Belarus, Look What Russia did or did not in the last war between Armenia and Azerbaijan , it is very consistent, it is very circumstantial , it is very contextual and yes there is no one, single policy in this regard, and I suspect that with growing domestic pressures (protests in Russia) make that some people says that Putin should go in 2024, and there's is this need of translation, and that he can not consolidate Russia around another Crimea, well there is no second Crimea, What I want to say that Russia in upcoming years will more focus on domestic issues, domestic agenda. Look, they don't even need European Union, that is an illustration of self-isolation , self-concentration, so the EU is bad because they are not negotiable, cooperative, I mean , neighbours are basically trouble makers; Belarus, and Armenians and Azeris , Moldova again . So it is hypothesis I can not prove it but I would expect a kind of fatigue in Moscow . So in all these cases (Moldavia, Armenia, Azerbaijan, Georgia) Russia was not able to demonstrate leadership qualities, but they act in case that any kind of Russia intervention should be cheap, inexpensive, short if it is about intervening and safe.

A. Simonyan - **Do you see any similarities between Russian central government's interaction with its federal units and post-soviet countries (now part of either EAEU or CSTO (ODKB))? Similarities on interaction, how they interact with them?**

A. Makarychev- To some extent yes, to another it is a no. Well, it might be similar in the sense that there is a concept of domestic colonialism in the sense that Russia was historically developed integrating territories sometimes economically, sometimes via force, despite of attitudes especially in non central regions, and like far Siberia it is still colonial, in fact it is a resource based, not many people in Moscow will understand what is going on there, so they have their semi-feudal presidential representatives, who report on the issues, but it is not. Yes in the respect, there is this type of thinking in Russia of colonial domination towards the eastern part of the country and the south as well. But the differences that again Moscow tries to differentiate between part that Moscow considers its undeniable part of sovereign possession, So Chechnya if we look back at 1990. Well Chechnya was considered as a possession, a thing that someone trying to steal from Russia. In this sense, the differences that these territories are considered as a property of Russia, everything that Russia projects in this sense of possession even to Belarus plus I think that people in the Kremlin they understand that lets say colonial integration even with countries that are culturally close to Russia, like Belarus, it is Russia might create a situation in which along with the territory you will get 15 million of people, might not be happy, well Soviet did this with Baltic republics, they integrated them with fear, with deportations and with very strong accent on forceful methods of integration. Ok think what you want to think about us but will not tolerate any sense of public discontent . Well in late 40s the Soviets Union could afford that because that country that defeated fascism, who would ask a single question, now think that they do understand that having, I mean expending Russia formally kind of integrating even Belarus, might be disastrous and I think that no one in Moscow think

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seriously about integrate Ukraine by force and reduce Ukraine to a federal district, and even reducing Belarus to a federal district , it is not an option. So if they would love to do that they would do that after the august elections, they had all the rhetorically resources, look this is a mass, and they could pressurise Lukashenko and in fact he asked Russia military backing in case, Putin was very cautious about this. I think there is an understanding that there is a more you integrate with a force or involuntarily countries with their population, the more issues you might have maybe not immediately. So I think they are very cautious about this, and Chechnya is one of the examples, I mean it was extremely expensive project for Russia, if we calculate all the money that Russia was investing in everything, formally, informally, you see these greed roads, skyrockets, they are one of the wealthiest nation, then you see it is enormous budget for a single, relatively small territory . SO I do think that territorial they don't think about applying any of these method that historically was used for creating a domestic empire, I am not sure, Look even they didn't use that for South Ossetia and Abkhazia, what would prevent them to just you know taking them? In a very simple sense I mean that would think twice.

A. Simonyan- **Do Russia seek higher centralisation in post-soviet space, if yes through which means? It is about decision making, law making?**

A. Makarychev- I think that they can move forward with greater centralisation but it depends on whether other partners would accept it

A. Simonyan- **So they have sovereign choices you think?**

A.Makarychev- It is hard to say, maybe I am not sufficiently knowledgeable to give the general picture when it comes to specific countries, like Kyrgyzstan, Kazakhstan, but what I see is many of them would think twice to take any legal commitments. When you mentioned some of thinkers or theorists, my point here is that there is a huge different between discourses and policy when it comes to eurasian integration and that is what many people tend to disregard or ignore. For example in each second article about Eurasian project name of A. Dugin was a must. Especially, when it comes to Western authors. Yes, Dugin is an important speaker , he has his own neofascism understanding of civilisation he tries to extrapolate to eurasian union but I don't think he has a serious influence on decision making. So in this sense I think we should try to make a clear distinction between all these theories about civilisational cluster and things like that state-civilisation and specific policies. They sometimes seriously does not correlate each other, even they can diverge, so for example if you look Dugin, it is very unlikely that through these lens you can look at eurasian economic Union even its institutions and understand. So that's a completely different type of political imaginary. Again this does not becomes a role material for institution building . I think once I tries to make a distinction between civilisational regionalism and technocratic regionalism . Civilisation is that it is identity driven it is about Eurasian as specific cultural pole in the global world and Dugin's idea and. Maybe Huntington visions that's one type of regionalism, another type is technocratic regionalism, a decants in a sense that what we need to build mechanism and whatever they do. So I think these are two different things and they might of course have some kind of common points, but necessarily.

A. Simonyan- **on " *sverkhnational'nost'* " and *"nadnational'nost'"?***

A. Makarychev- I don't exclude that Russian speakers refer to something as "nadnational'niy" supranational, they still have in mind a very strong imperial momentum. Put it in different way. I mean it happens very offend when you compare Western vocabulary and Russian political language, they might use similar terms and infuse completely different meaning to them. That s what happened many many time even in my own research. I mean concept are the some but people can not understand each other. So I suspect that there is a very strong imperial momentum in that, it is supranationalism but under the condition of hegemony or dominance or domination of Russia, Which again makes the Eurasian Project very different from the European project that European project exactly is about constraining countries like Germany and depriving Germany from its currency and we know about this political undercut that shape the Eurasian project as a project of crating an equal space in which large powers would be somehow dissolved. Nothing like that. So in this type of supranationalism which is based on this idea. In the case of Russia I think supranationalism is based on the idea of reagregation of territories and peoples into one single imperial body, which is quite strongly embedded into the general foreign policy philosophy of Russia.

Appendix 1 (continued)
A. Simonyan- **What is the role of Russian language in post-soviet space?**

A. Makarychev- Russian language is a perfect example of how Moscow instrumentalismes cultural factors.For me language is a communicative phenomenon. And for Kremlin it is an instrument it is a tool. It is not about expending cultural horizons and the fact that the state invest a lot In this sphere, I think it is conformational. I think it remains quite high in the priorities of Moscow. I know that Moscow develops its Russian language teaching resources in Central Asia particularly, I have friends who are teaching Russian language in Central Asia and this is sponsored by the state. If you remember Lavrov again spoke about discrimination of Russian speaking minorities in Baltic States, in his recent big interview. I mean the language factor as such as highly positioned in the scale of priorities, I don't think that it is diminishing, well, maybe sources are changing or specifics forms how it is projected , I think it is still there, I already mentioned Karabakh. The whole interpretation of Ukrainian situation is language based, Crimean isn't Ukraine. I mean if you look at Russian mainstream media, language was one of the top explanation of what happened. So I think it is still there. Frankly speaking, I don't know how much Russia can get . The thing here is that in most of neighbouring countries including central Asia and south caucasus , most of the population they do not have any problems, they would keep speaking Russian. Russian language is not perceived as a political instrument (in post-soviet countries), it is about expending carrier opportunities, Russian linage may be helpful or instrumental in job interviews . So in this sense if Russia expects political loyalty, Russia might be spoiled.

A. Simonyan-**Will Russia deploy any political measures (against post-soviet state which does not comply its regional (international) legal obligations? How Russia perceive this non-compliance of obligation?**

A. Makarychev- What I know is that almost one half of decisions made in EAEU commission either not implemented at all or not properly implemented. In this sense I think Moscow knows that certain parts of decisions legally binding are not properly implemented, but I do not think that this is something that Moscow knows how to solve. I think it is mostly technical issue rather political issue at least from Moscow's perspective, I don't think that they claim openly that someone tries to sabotage from the inside, at least I have not heard about that. They either try to make an impression that it is non-existent or not issue at all, or just putting it in a very technical way. And now they have perfect excuse for it because of Covid, because of pandemic.

Appendix 2. Interview with Professor V. Morozov from the University of Tartu

A. Simonyan-**What kind of tools do Russian central authorities prefer to construct their relations with post-soviet countries (now part of either EAEU or CSTO (ODKB)); legal or informal (political)?**

V.Morozov- Short answer, I do not know. I mean because it is probably both but I can say that in general my impression is that Russian approach to international law has always been that everything needs to be put on the writing, so everything should be formalised . So they always like to create formal institutions and make formal agreements and so on, but at the same time it is not, it does not exclude informal practices which exist alongside this formal institutions. So I think the general practice is that Russia tries to achieve some sort of, create some sort of coherent institutional structure on paper but then when it comes to the reality when they would need something and they would think that the problem needs to be solved they can do it also informally and circumvent also the institutions but I do not know if I have any examples, I have never done research on Eurasian integration, so I can not really give an [answer].. well I may be, when it comes to counter-sanctions, the restrictions on the imports of food into essentially the EAEU, was Russia allowed to do that under the EAEU legislation or not.

A. Simonyan- **When I was discussing with the honorary professor Mirel, we were discussing the level of pressure, for example Germany use in European Union , the level of pressure is it the same for the post-soviet space by Russian?**

V.Morozov- but listen, this is always a relationship, so it depends on what kind of relationship there is between countries and also between specific actors. So, of course, the relationship between post-soviet actors by definition are different compared to relations between Russia and Germany or Russian and German actors, because, in formal case we are talking about more or less a one single cultural space, at least when it comes to lets say political culture, institutional legacies and so on. They have common origins, even though was in Soviet Union wasn't everything completely uniform, but still it is a system which comes from the same root, but for example in Germany its a rather different system and of course the relations would be different because they can not rely on the same shared cultural background, institutional legacies and in that sense, of course they can rely on informal practices much more when it comes to post-soviet space, because again these are people, especially older generations who are still in power, they come essentially from the same culture, they have the same jokes to share, or something like that. That of course affects the relationship it may change with time but now we are still talking about generations of people who come from the same essentially soviet elites.

A. Simonyan- **What does Russia's concept of "zones of privileged interests" mean for constructing legal relations with the post-soviet space?**

V. Morozov- No, as far as I know it does not have any legal meaning and it is difficult to give it a legal meaning in todays world, because essentially it is an imperialist concept. So, I don't see how, I mean one of the principle that Russia employs in regional conflict is that regional conflicts must bee only a concern of regional partners, so what they say is that extra-regional powers should not intervene into the regional conflicts and that concerns south Caucasus, that concerns north caucasus, it concerns now Ukraine as well. But still it is not a fully fledged legal concept there is no legal ground in it as I understand, so it is mostly political to realise only concept of spheres of influence , to revise on such concept as world power, basically on the legacy of imperialism and colonialism but at the same time you can say that it might be rooted in such concept such as great power management, which is again English school so it is political reasoning, but in that sense it is also , In a sense, Eurocentric and colonialist that certain great power which have supposed to decide for others and they each have spheres of responsibility, but there is no legal ground in it.

A. Simonyan- **Which has a prevalence in relations between Russia and post-soviet countries; international (regional) law or "zones of influence"? What is the role of regional organisations?**

V. Morozov- I guess, to me it is clear that in post-soviet space defiantly Russia priorities this zones of privileged interest and everything that connected with that. In Post-soviet space where Russia prioritise is the principle of sovereign equality on a global level. If we are talking about post-soviet region it is mostly spheres of influence and they suppose to create an illusion of equality of states but of course it is

Appendix 2 (continued)
an illusion it does not even work as an illusion, it is enough to look at the economic data, for instance and compare sources available to Russia and to its partners, and it becomes clear that it is highly asymmetrical and even though this formal equality in some of the institutions, de facto it is working as a Russian instrument in the first place. But if it comes to other region, such as for instance, South East Asia or in general Asia-pacific then of course Russia tries to enter to those institutions based on the principle of sovereign equality and this is where it wants to be recognised as an equal player and that concerns also the transatlantic relations . So Russia does differentiate between its own region, which it considers its own and the rest.

A. Simonyan- **But what supranational institutions can manage this great power concept?**

V. Morozov- No but they [supranational institutions] are built as in a way continuation of Russia's great powerness . Their all idea is that Russia is a dominant player. And it is interesting of course that they do not officially recognise it in designing those institutions, they imitate European integration rather with this principle of equality and so on but at the same time very limited supranationality for obvious reasons but at the same time I think it is very visible that Russia is—- I mean those institutions are there to promote Russia's great power and to also confirm or to reinforce Russia's great power status within its own region because once again these are the legal instruments of dominance. I mean, I don't want to be misunderstood, I say that there is some material background behind these institutions, economises remain to some degree integrated, there is again shared legacy which somehow makes sense economically and socially and also if you look at labour flows but still it does not care the fact that Russia is at the centre and a very dominant power, economically, military, and so on.

A. Simonyan - **Do you see any similarities between Russian central government's interaction with its federal units and post-soviet countries (now part of either EAEU or CSTO (ODKB))?**

V.Morozov- No, I think it is still very different, I mean, yes you can of course see similarities , some similarities everywhere but no I think Russia still has this idea that all those countries are sovereign countries and it treat them differently, even if you sometimes creates troubles and so on, you don't intervene directly into how they manage, so I do not really see, I mean if you look at Armenia, for instance, they have been repeated instances where Russia could have intervened but it didn't in domestic affairs, including right now and Kazakhstan the same, Yes there are people who question Kazakhstan's territorial integrity but officially Russia has never voiced any such ideas. Yes, Putin said at couple of times that Kazakhstani state was only created during Soviet Union but that is simply ignorance and it doesn't in principle question territorial integrity of Kazakhstan because in a sense Russia's statehood in its current form has been created during the Soviet Union , right it was the RFSFR . So, there is no question of territorial integrity, there is no question of direct intervention, there might give some advice at closed doors , they might even put some pressure on those people, but it is radically different how it treats its own regions, essentially governed from Moscow with very limited autonomy given either to governments or to governors or to legislative assemblies. It is very centralised at the moment, federalism is there only as a formality.

A. Simonyan- **Do Russia seek higher centralisation in post-soviet space, if yes, through which means?**

V. Morozov- I see that Russia wants to keep the post soviet space under control and its uses different means to keep it under control. So basically, Eurasian Integration is the most obvious way of keeping it under control, so you crate those structures , you create some freedom of movement , you crate economic integration to a degree And by doing that you surely constantly change information, you ensure kind of contact, you sure some sort of interdependence that then makes it more safer for Russia in the sense What Russia is afraid of is those states going over to someone else and of course for the first place it is Nato, in central Asia it is not really an option, but then there is china which is lesser concern, but I mean it is problematic, so what Russia wants is to ensure that these states remain Russia's orbit in the sense that Russia can control what is going on there but not control like manage, control like prevent the worst case scenarios happening. That is what they want. So even if there is a revolution in Kyrgyzstan, Russia is concerned but then it sees that Kyrgyzstan is not going anywhere, just a change of the elites and Russia is relatively relaxed about that. It is slightly more uneasy with Armenia because Pashinyan for instance was giving some contradictory signals and the wars, anxiety, Russia, Armenian going west or whatever but so far there have been listening to those experts who say that No Armenia is not going anywhere so you should not be alarmed. But that is one model. The oder model or maybe the respect but actually you can

Appendix 2 (continued)
see how it works in most extreme cases, such as Georgia, when you feel that the country is no longer under the control and eventually this leads to military operation and support for separatism and then Ukraine the same scenario, and then Moldova is somewhere in between I guess, it partly also has to do with geography but at the same time, well I mean Transnistria, that is older, but this conflict is also used. So I mean that is the model I think.

A. Simonyan- **The role of Russian language in post-soviet space?**

V. Morozov- Well it does, of course, because Russian is very dominant in Kazakhstan, Kyrgyzstan, still lingua franca in my respect, it is less dominant lets say in South Caucasus , it is less dominant in Ukraine but it is still quietly understood and can be used even tough the use of Russian might be problematic in certain contexts but still it is de facto the second language in the country. So, yes it is still there but again it depend on the country, there is huge difference between Kazakhstan and Kyrgyzstan, where Russia is really the second, if not the first of the elites, the inteligentsia, intercultural exchange and so on and other countries in which although Russia is widely understood, it is not as dominant.

A. Simonyan - **What kind of political measures (if any) can Russian authorities take if a post-soviet state does not comply its regional (international) legal obligations?**

V. Morozov- Well I think what they do normally if they want to send a signal is some sort of nationalist myths. especially those which question territorial integrity of those countries. As a political step the first thing is the wave of discussions, it can be a TV show, a documentary , it can be a parliament debate, someone would say about these countries. And I think the second level, when it gets really serious, it is trade and freedom of movement of workers, which does not equally apply to all countries but in those cases when it is essential they might use it, but still it would be kind of disguise as very bureaucratic matters , some sort of sanitary concerns , as they did it with Moldova, for instance . That is generally something that would be used. And normally as an extreme measure they could put explicit pressure, but I do not think that it has really happened beside of Georgia and Ukraine cases , this is really an extreme option . It would be diplomatic pressure of course , but mostly behind the close doors, they do not want to question Eurasian unction, and some sort of Media signalling but direct signalling.

Appendix 3. Interview with Honorary Director General of the European Commission P. Mirel

A. Simonyan **Does supranational decision making at EU (Commission's work) level has informal patterns? If yes, what are their characteristics?**

P. Mirel-I think you should clarify what is informal, If your intention is to show that the Commission is acting on its own, in a sort of bubble, then it is wrong. It depend what you mean by normal. For instance, since some 10-15 years there is now the tendency for the Commission before embarking into a new directive or let's say in an important change to publish what is very often called a "white book". That is to explain the background of, for instance, of biochemical products. To explain the background, the situation, to give certain number of options with consequences, the impact on this, on that. Yes its called a white book, To get what? Well, to get reactions [the voice gone] from associations, environmentalist.So , these white books which are very often used since couple of years are meant to make sure that the Commission would obtain a lot of reactions from all direct, or potential stakeholders before it decides to work on a draft directive, draft regulation or whatever it is. So in that case, you could say that the decision making process, it is formal although it did not exist 30 years ago.

A. Simonyan- **But when I refer informal patterns or practices, I am interested in interrelation between supranational bodies and the states?**

P. Mirel- That is what I thought. But I wanted to underline this point of the White books, which are playing now much bigger importance than they used to have. Now to answer the question more directly. Yes, indeed there are informal discussions on two levels. First of all, when a service of the European commission, let's say service dealing with transport, has prepared a draft directive or regulation. It will send this project to all the other services on agreement, It is called inter-service consultation. During this inter service consultation and particular in the end, there is normally a period of 2-3 weeks to react, very often other services will have comments, remarks, suggestions, so there would be meetings to find a compromise solutions, to explain to add few things etc. At the end of this process, it may well be that not all the question would have been answered, it may well be that not all issues raised by certain services will have been dealt with, So very often what happens is that the DG would invite the counterpart from the service that is creating some noise to a lunch. This is a classical practice in Brussels, invite him for lunch, in particular in a restaurant that you know he or she would love fish, or whatever it is, but it is the classic. This is an old tradition. They would try to find a solution, Okey maybe it is not always around the lunch, but it is very often like that. But it before the college of the commissioners for approval it may well be also that they are still at opposition and in particular opposition coming from some member states who may have received a phone call from their capital city, the country from where they are coming from, or from the capital city of the friendly country, you know for instance the slovens or the croats have always been very close to the Austrians or to the Germans, it is the Austro-Hungarian empire, right, so the Slovene commissioner or the Croat commissioner may well receive a phone call from a good friend in Berlin to say look guy you can't accept article 3 in this bloody regulation, because it will be against my industry or whatever. That would come on top the maybe German commissioner who would have received also phone call from his federal minister in Berlin, that happens on a regular basis, despite the fact that the treaty clearly says that commissioners are independent from their country, nevertheless this happens on a regular basis

A. Simonyan- **but then what is the reaction of the Commission workers to this ?**

P. Mirel- The reaction it depends. It depends on the seriousness of the issue, on the importance of the issue. In most cases an explanation would head finding a solution, it would not go to trouble etc. They have been cases, in particular in relation to chemical industries or to automatic sector, where the germans have put a tremendous pressure, because of their interest in chemical industry and car sector, tremendous pressure on the other commissioners, but that goes a bit beyond this question. I think, but anyway I mean in the second level of intervention and again there could be separate meeting or lunch or whatever, usually takes place even before the commissioners discuss the issue, it takes place at the head of cabinets level, but before the draft proposal appears on the table of the commissioners, the head of cabinets would receive phone calls and would try to find solutions. So this is very classical. For those who would say common' this is not true, no, not only it is true but is classical, it is normal, it is very often happened.

Appendix 3 (continued)

A. Simonyan- **Is there weight of these informal calls, if a call comes from Germany, and a calls come from Malta, is it have the same weight? Is the gaps of these two weights are big or the call have the same influence?**

P. Mirel- Oh, it is clear that there is a big gap, no comparison if it comes from Malta or form Germany. That is clear. Big member states has much more important role. That is clear. But it depend also on the field. Phone call from Poland on agriculture or from the Ireland, where the farmers are very important for the elections, that plays an important role. Countries which have agriculture as a very important economic sector. That matters. It does matter, but most of the issues that the commission is dealing with, are not directly related to agriculture. I mean, most of them are related to the industry, transport, environment etc. So you know Germany and the Nederland as very important chemical producers are very often in troubles with he proposals.

A. Simonyan- **And if there. Is a contradiction between these informal calls, let's say coming from Germany or Sweden, is there this pattern who is winning? What is the general idea when there is this contradiction?**

P.Mirel- What you mean by contradiction?

A. Simonyan - **So for example, on the same matter there is an informal call from Germany and there is dramatically different Phone call from Sweden? And there is contradiction what is informally proposing Germans, and informally proposing Sweden?**

P.Mirel- Yes that is important as well, yes you are right, then it helps the head of the commission to reach a consensus around a table, because not only people oppose but there are people very influential. By the way I forgot another thing, which is the clever member states until the proposal is finalising in the DG, say the DG near or whatever DG, a clever member states as soon as they here that one of the DG preparing something, the clever, I am insisting what is clever, I would say later why, the clever member stats would try to organise a meeting with he head of Unit, it is not very high level right?the head of unit. But this is the man who holds the pen. So they would try to influence right from the start, that was very much widely used and the British used to do, very clever member States. That what they used to do. Where as the French, for instance , they would plead to the DG, the director General, which is stupid, you know, it is much better to try to influence right from the start of the process, trying to influence the man who holds the pen, rather than waiting until the ink is dry and then you go at the above level, so there are different attitudes between Member States, that is very informal as well. Of course, you don't have to accept, you are polite you receive, I have done several times in relation to Central European countries, to Western balkans, whatever, when we were preparing the reports, for instance, or country reports, or the IPA program, etc. And that was mainly the British who used to do that. The British, the Swedes, you know more nordic countries. Southern Countries, they have higher sense of importance of the top level, they would rather phone call to a DG or Commissioner and of course in most of the times, it comes to late, it does not help. So that's an important difference as well.

A. Simonyan - **How is equality of (member) states as a principle of international law informally applied at EU institutional level and in decision making process? Are there any constraints, in reality, to apply the principle at the EU level? I mean do you see whatever you have described now, this equality of states as an International law principle is respected in this informal practices?**

P. Mirel- well, wait a minute, first of all in the Council they are not equal. In the council they are not equal, when it comes competencies where decision is based on qualified majority, the qualified majority means that the bigger is the member states, the bigger the votes that State has in the council, so that is an inequality.

A. Simonyan-**Yes, but that is in formal part, that's why in informal part?**

P. Mirel-Yes, but having say that, if we stick to the council level, despite the fact the qualified majority is used for, normally the council secretariat and the presidency would try by all means to find a consensus, it is never good to come to the point, when you have to vote.And it is actually very rare, it does not happen often, This does not happen often. In most of the cases, the consensus would be looked for by both the presidency and the Council secretariat. And it works very well, in 95% of cases it would be agreed by

Appendix 3 (continued)
consensus and it is important also because whenever one, two, three member states, who are not so much in favour, or would like major changes to draft proposal, if they realise that there is a large majority against them, then then have to say to they capital cities, look guys we have to abandon, this is the last battle and therefore they would not vote formally yes but they would accept the consensus. So that is an important point. So Members are not equal in terms of weighting votes, but in most of the cases there is no vote. Don't forget that. In the commission it is different. The commission does not vote, so you have the basically reach a consensus, normally I have never seen situation where one of the commissioners would go to the press afterwards and would say, you know I disagree but I have to accept. No, I have never seen that. But of course as you rightly said and there is the principle of equality and the reality that Malta does not equal to Germany, that is clear. That is absolutely, obvious.

A. Simonyan -**What do you think, what are the main differences of informal patterns of decision making at European Commission level and EU Council level?**

P.Mirel- No, no, no, except before it reaches the Council of Ministers, you have discussion in working groups and afterward in the Coreper and very often at Coreper level what happens is exactly what I was describing at DG level in the Commission.You know the French representative will seat together with Swedish one, or they would go for lunch somewhere and will try to find a solution. So you find absolutely the same type of informal relations that you have at commission level.

A. Simonyan - **Do European Commission seek higher centralisation, both in political and legal sense, in the European Union?**

P.Mirel-I don't think that the Commission is looking for higher centralisation. This is quite the opposite since 20 years . It depends what you mean by centralisation. But if you mean keep more and more power for itself as an institution, I am not sure what I have seen over past 20 years, is the creation of great number of agencies, you have seen that, agency for an environment, agency for whatever, they are 20-25 agencies. Of course they are attached to the commission but nevertheless they have high degree of autonomy. So I would say that it is rather decentralised system of management, then centralised.But by centralisation if you mean more competences, that is a different story. Then yes the commission has always looking for more competencies not to say that the more competencies I have the better it would be, no, but it is the Jean Monet method if I may say, through crisis you need to go forward and it would be forward only by overcoming the problems that you discover during the crisis, so it means probably a new proposal and it may mean more competencies for the commission or for an agency. In that sense, Centralisation yes, but not in the sense of getting more power for itself.

A. Simonyan - **What is the language of informal communication at European Commission level? To your knowledge, do people sharing the same language capacity interact in their language (Poles in Polish, Romanians in Romanian, Estonians in Estonian, etc,)? Have you heard, Estonian language at the Commission?**

P.Mirel- Me, never. If you have an Estonian DG and he is going to meet with an Estonian director from another service, if they are alone, of course, they would speak Estonian. It is normal, why would they move to English. But in most cases, in 95 % of cases, they would not be alone, that would be meetings before they go for lunch or CIS meetings, there would not be meeting where there are only two Estonians. I am sure there would be also a German, or a French. So they should switch to a third language or second, which will be inevitably English, and that's an important point. Until the 1990s even after the Brits, the most common language in the commission was French, and most of the Brits who joined after GB joined, they used to speak a very very good French. So French continued to be the main language for working relations in the commission. What changed, was the accession of Sweden, Denmark, Austria, you know this wave of accession. English became then the main language. And it remained the main language.

A. Simonyan - **Yes, but from probably this sense Estonian would be a difficult case as there are not many Estonians working in the Commission, let's say German people majority in the group, do they prefer communicate in German?**

P. Mirel- I am sure they would prefer to communicate in German. But if there is a nor German speaker in the group they have to switch to another language, and it is very very often the case, you know there has been this policy in couple of years ago, which is very positive that anyone joining the Commission should

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speak German, English and French but then there is always one of these three languages which is less practiced and the most common language continues to be English, definitely. One important point to mention, that when you are working at the Commission either as an official or contract agent on a mid or long term contract, you have plenty of possibilities to study languages, it is extraordinary, the facilitates that are created to learn languages of the EU but also other languages outside the EU, there are Russian courts, Chinese courses, Arabic courses etc. that is remarkable.

A. Simonyan - **What do you think, is informal politics prevailed in intra-Union (Member States and EU institutions) relations or relations with neighbouring or partner countries? The level of pressures when it comes to the getting something from partner countries. I am also referring to equality of states, do you see an equality?**

P.Mirel- No I would not say it is higher but it depends on the topics. Let me take two examples. Intra-EU, if a member state does not implement in a right way a directive, meaning it could be an infringement procedure, then the pressure will be very high from the commission, and before it comes to formal by sending a letter, and going to the court etc. , pressure will be very high and of course the commission will use all possibilities, including mentioning letters received from the citizens who says that they do not respect, or companies says my status is not respected by the directive, so pressures will be high. So there is a clear legal base, like in the article of the direct, then the pressure will be really high. And the same goes with the neighbouring countries. I have myself shared very often meeting with the Poland in 90s or afterwards Serbia or etc on trade issues. Well, if they do not respect the AA agreement, very often imposing import restrictions, taxation, whatever before using article whereby you can ask the commission for the meeting, explain why you have a problem with it sector, why you should impose restrictions, anyway. Very often they do not impose brutally, and then we were extremely tough , extremely nasty , so whether it is external or internal, if it concerns a legal base , something that the member states or the partner country has accepted, we would be very taught. No if it concerns other issues, which are not based on Association agreements, which are. More, for instance Ukraine or Serbia, which have to transpose a directive but it is not exactly like on trade issues, you have accepted to lift a quota, to lift the taxation on the ex transposing a directive you have plenty of time to do it, you have event the possibility to extend the periods the pressure will be much much less. Except, on key issues, like corruption, judiciary, etc. And you may read between the layers with Ukraine, Last year there was a summit Ukraine-EU. Of course, the press did not reflect that, but internal closed meetings, it was very taught on the president of Ukraine on corruption, there it was very taught.

A. Simonyan - **Why if in informal level the Commission knows that a directed won't be accepted by the states, why they still send the directive for formal procedures?**

P.Mirel- Honestly, I am not able to answer to that. I do not have any example in my mind.

A. Simonyan - **How does the European Commission see Russian interactions with States of post-soviet space? In its regional level like CIS.. Do you see any similarities that Russia use the same methods like Germany use for interaction with the EU commission?**

P. Mirel- That's a very good question. I am not sure, I can really answer to that, it is for you to answer, you know much better their union, then I do. I guess Russia would be even much taught in that union than Germany would be in ours. I don't you to misunderstand me on Germany. Germany is the biggest country, Germany has the biggest industry, and therefore there are always many number of legislative proposal that, of course, may heart or please or favour Germany, so Germany is more embarked than than other member state into the process, but it does not mean that Germany is like a bull, trying to kill the commission at every proposal. Don't misunderstand me , but what I know How we see Russia from the Commission in particular in DG near , I can summarise it by saying dividing to reign, it is clear that Russia at least vis-a-vis European Union and we have seen Borel in Moscow, that is very clear , they are not impressed dealing with the EU, they radicalise the EU, They want to deal with only Madam Merkel and Monsieur and that is it. But for the rest I do not know how they behave really, but I would be surprised that they would not behave in a much taught manner than the Germany in the EU, because, they are the big country, although Kazakhstan resists sometimes, that is the country that refused that the country would become a political Union and stay economic, so I guess that s one that is able to resist.

The rest was not recorded by the request of Honorary Director General P. Mirel

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