

The role of national parliaments and European Parliament as guardians of European values: The case of democracy and the rule of law in Cyprus

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ABSTRACT

National parliaments, alongside the European Parliament, form a constituent part of the democratic legitimacy chain of the Union and play an integral role in promoting EU values in decision-making. This paper aims to assess the role of national parliaments, supranationally within the governance of the EU, but also the democratic standards that national parliaments must meet when acting internally, outside the scope of EU law. These findings will then be put into practice to assess the Cypriot Parliament as a guardian of European values nationally, which provides for valuable insights due to its unique constitutional setting. The assessment is specifically conducted in relation to: (a) the internal organisation and composition of the national Parliament and preparatory procedures and (b) the proposal, drafting and implementation of national laws. The paper then assesses the role of the EP in further supporting national parliaments in their role as guardians of European values nationally.

Introduction

In the European constitutional tradition, parliaments are political institutions whose central function is legislation, fiscal matters and the supervision of the executive. Despite the process of Europeanisation and deeper integration, national parliaments remain central in the European governmental systems and maintain their constitutional importance in the member states, but also in the governance of the European Union (EU). Therefore, the effectiveness with which parliaments exercise their

constitutional and legal powers is crucial to ensuring the desired quality of legitimacy in the democratic process, both on the national and European levels.

As such, EU parliamentary studies often examine questions around the direct involvement of national parliaments in the EU decision-making process, such as the yellow card procedure, through which national parliaments can exercise parliamentary objections *inter alia* on grounds of subsidiarity to prevent a legal proposal from proceeding.¹ However, there is a gap in the research of parliamentary studies, on whether national parliaments are required to adhere to and promote EU values in their internal constitutional settings especially when acting outside the scope of EU law. Put differently, are national parliaments required to safeguard European values, such as the rule of law when operating nationally, completely outside the sphere of EU law? For instance, when deliberating or voting for national laws, when declaring conflicts of interest or other personal benefits, and/or when exercising other monitoring responsibilities?

To answer this question, one must be reminded that even if the national settings and/or internal formations of national parliaments are not up to the EU to decide or monitor, national parliaments do constitute an integral part of the Union legislature together with the European Parliament (EP), and they may need to operate with due regard to specific values, even nationally. The case is similar to how national courts form part of the overall judiciary in the EU, yet EU law does not legally govern the internal settings and formation of the national courts. Europe has already witnessed a rule of law crisis (and still is), following the significant deviations from the rule of law principle that occurred in several Member States caused by national courts' practices, such as the process of appointing or removing judges from office, which is not monitored or enforced under EU law. If internal procedures of national parliaments are neglected, a further backsliding of the rule of law principle could similarly emerge, *albeit* from a different perspective, that of the legislature.

This paper aims to first assess the role of national parliaments, nationally and supranationally arising from EU Treaties, particularly after the conclusion of the Lisbon Treaty. The analysis includes the role and competences of national parliaments in the governance of the EU, but also the democratic standards that national parliaments must meet when acting internally, outside the scope of EU law. These findings will then be put into practice to assess the Cypriot Parliament as a guardian of European values nationally. Due to the *de facto* partition of the island since 1974, the House of Representatives is functioning under a unique constitutional setting (beyond the Constitution), which could make it more susceptible to backslidings of the rule of law and democracy. This unique constitutional setting, and the insights from one of the smallest EU states make it a valuable case study to assess the

contribution of national parliaments in safeguarding and promoting European values nationally. The assessment is specifically conducted in relation to: (a) the internal organisation and composition of the national Parliament and decision-making procedures and (b) the proposal, drafting and implementation of national laws. The paper then assesses the role of the EP in further supporting national parliaments in their role as guardians of European values nationally.

The 'National and supranational' role of national parliaments under EU law

The primary effect of integration is that national parliaments have handed over legislative competence to supranational institutions. From the time the EU consisted of six or twelve member states, when their input could arguably be larger, national parliaments were peripheral to the development of European integration and their democratic features were largely ignored. Consequently, national parliaments have been characterised as 'victims' of Europeanisation (Norton, 2011), due to the technocratic features of EU decision-making, which have strengthened the EU executive bodies and the Council, at the expense of national parliamentary practices (Moravcsik, 1998).

Since then, EU law has developed towards granting a more expanded role to national parliaments within the EU decision-making processes but also, according to the argument of the paper, towards requiring national parliaments to uphold EU values even when acting outside the scope EU law, in purely internal matters. The section provides an analysis of role of national parliaments in the EU decision-making process particularly after the Treaty of Lisbon and subsequently discusses the duties deriving from EU law when acting in purely internal situations.

The role of national parliaments in the EU decision-making processes

The Treaty of Lisbon has acknowledged the criticism on the marginalisation of national parliaments within the EU legislative process and included substantial amendments aimed at improving the participation of national parliaments in EU decision-making. The most important is the delegation of the scrutiny process in accordance with the subsidiarity principle. This willingness to enhance the role of national parliaments was primarily driven by the long-held concerns on EU legitimacy and democratic quality, which seemed to be improved by the increased role of the EP following the Amsterdam Treaty. Yet the democratisation process through 'more parliamentarisation'

was not sufficient and further expansion was needed to also embrace more formally national parliaments (Cygan, 2021).

The Lisbon Treaty provided the first explicit legal recognition of the national parliaments' contribution in EU affairs under Article 12 TEU, which enables them to actively contribute to the Union's good functioning. Also, Protocols No. 1 and 2 of the Treaty introduced new procedures related to early control of the subsidiarity principle. More specifically, Protocol No. 1 provides for an extended right of national parliaments to receive documents directly and timely from EU institutions, including draft legislative acts, annual legislative programmes, Council agendas and minutes and the annual report from the Court of Auditors. Importantly, Protocol No. 1 has also extended the period between a draft legislative act being made available to national parliaments and the date when it is placed for adoption under an EU legislative procedure to eight weeks,² which allows for more effective internal scrutiny. Additionally, national parliaments participate in the inter-parliamentary cooperation with the EP, in accordance with Protocol No. 1 TEU.³

More importantly, national parliaments, can directly participate in the EU legislative processes through their engagement in the monitoring of the principles of subsidiarity and proportionality as established in Protocol No. 2 TEU.⁴ Specifically, the Protocol provides that any national parliament may, within a period of eight weeks from the date of transmission of a draft legislative act in the Union's official languages, send to the Presidents of the EP, the Council and the Commission a reasoned opinion, stating why it considers that the draft in question does not comply with the subsidiarity principle, as defined in Article 5 TEU.⁵ If one third of the national parliaments conclude that the subsidiarity principle is not adhered to, the draft must be reviewed.⁶ If, in the context of proposals under the ordinary legislative procedure, at least a simple majority challenges the compliance of a proposal with the subsidiarity principle, the Commission may amend, maintain or withdraw the proposal, but, if it chooses to maintain the proposal, it must provide reasons for doing so.⁷

The inclusion of Article 12 TEU is encouraging as it shows a participatory function for national parliaments in EU affairs, and it is the first formal recognition of the contribution of national parliaments towards improving the EU's functioning. Through the monitoring of subsidiarity, national parliaments further strengthen the democratic legitimacy of the EU's legislative process. Therefore, especially after the Lisbon Treaty, national parliaments of Member States, alongside the EP, form a constituent part of the democratic legitimacy chain of the Union and play an integral role in securing EU foundational values to decision-making, both on the national and European levels. Although the mechanism for monitoring compliance with the subsidiarity principle in legislative proposals of EU institutions, appears to

remain a process with little impact, it has undoubtedly contributed to ensuring democratic legitimacy in the Union (Ασδεράκη, 2014).

National parliaments as guardians of European values nationally

In addition to the increasing expectations created by EU law that national parliaments would contribute towards improving democratic legitimacy in the EU decision-making primarily through subsidiarity monitoring, further expectations are also born at the national level. These expectations include firstly the 'linkage function', namely the role of national parliaments as communicators of EU affairs to citizens, which promotes manifest legitimation as voters become aware of EU policy outputs. Secondly, national parliaments through the transposition of EU law in the national legal order, exercise their legislative function, contributing to the manifest legitimation and citizen representation, because even though they are bound by the objectives and deadlines, they can choose the form and method to reach them (Kinski, 2021). According to the argument of the paper, there is a third expectation born at the national level by EU law towards national parliaments – their role as guardians of European values enshrined in Article 2 TEU.

The wording of both Articles 2 and 7 TEU indicates that a similar rule of law standard applies both vertically between the Union and the Member States' levels and horizontally among the Member States themselves (Schroeder, 2021). Every exercise of public authority, irrespective of whether it has its origin on the Union or national level, is subject to a set of legal limitations and duties, and shall be assessed according to this rule of law and democracy standard (Hilf & Schorkopf, 2022). National parliaments constitute public authorities, falling under this legal obligation. However, due to the Union's nature as a community of integration, this rule of law and democracy standard should not be understood as a 'federal-state-type' constitutional homogeneity (Schroeder, 2021). Although Article 2 TEU provides for common constitutional values, the differences with the Member States' constitutions and the respect for national identities are also acknowledged under Article 4(2) TEU. Therefore, the values enshrined under Article 2 TEU, including the rule of law, should not be understood as seeking the existence of uniform rules nationally (Schroeder, 2021). It is rather observing a European minimum standard of protection of these values, allowing for individual national approaches to the rule of law principle, especially in areas where Union law does not provide for a harmonised level of legal protection, provided that the 'unity and effectiveness of EU law' are not compromised.

Defining this minimum European standard of protecting the rule of law and democracy nationally is not an easy task, especially considering the

difficulty of conceptualising these values under Article 2 TEU in the first place. Regardless of the lack of a single comprehensive definition of the rule of law on the EU level, thorough assessments of relevant Treaty provisions, secondary legislation and soft law instruments, indicate a thick approach adopted towards the principle. More specifically, definitional developments deriving from Articles 2, 19 and 21 TEU, the Rule of Law Conditionality Regulation 2020/2092, and the European Commission's annual report on the rule of law demonstrate the emphasis on different components of the rule of law by different institutions rather than a complete lack of definition (Marcou and Kalaitzaki, 2022). The absence of a single, comprehensive or exhaustive definition should not be confused with an *à la carte* understanding of the rule of law (Pech, 2022),⁸ but rather as an opportunity of a more substantiated approach towards the principle on the EU level. This thicker conceptualisation of the rule of law can arguably cover key components including representative, effective and accessible public authorities, the safeguarding of accountability and integrity through institutions representing the citizens as well as transparent and impartial procedures.

A rule of law compliant and democratic governance not only requires representative and participatory institutions for citizens, but it is also based on accountability and the protection of citizens from the exercise of arbitrary power. Therefore, in accordance with Article 2 TEU, additionally to the comprehensive system of checks and balances to prevent the concentration of power and the consequences from abuse of such power, both democratic accountability and adherence to the rule of law are considerations of legitimate governance. Furthermore, EU States and/or their institutions, that do not respect the rule of law, even if they do not overtly breach EU legislation, undermine the principle of sincere co-operation and mutual trust as enshrined in Article 4(3) TEU, threatening the rights of their citizens and of other EU citizens in their territory (Gostynska-Jakubowska & Bond, 2020). Due to the importance of these values, the EU may proceed to take action under Article 7 TEU to suspend the participation of any Member State that violates these core values or initiate the infringement procedure under Article 258 TFEU. Previous examples of such violations include the cases against Hungary and Poland,⁹ where national measures on the involuntary transfer of judges undermined the principle of judicial independence under the rule of law.

Moreover, Articles 9-12 TEU, which lay out the democratic principles upon which the EU is founded, represent a much clearer statement, compared to previous Treaties, on how the EU seeks to fulfil the standards of democracy and accountability set, in all member states (Wouters et al., 2009).¹⁰ Article 12 TEU explicitly recognises the democratic credentials of national parliaments and the contribution they can make to improve the EU governance. Articles 9 and 10 TEU seem to 'give expression' to the

value of democracy as enshrined in Article 2 TEU, although the CJEU is yet to make a combined reading of these two provisions. Consequently, the generic nature of Article 2 TEU and the explicit acknowledgment of the national parliaments' democratic credentials, seem to leave room for implying that national parliaments as agents of the governments have a role to play in internally promoting the core values upon which the Union is founded, including aspects of the rule of law and democracy (Cygan, 2013).

It can therefore be argued that the provisions above place a 'democratic standard' upon the Member States, based on which parliamentary institutions must not only be representative and accessible, but also transparent, accountable, and effective for their performance and integrity. Therefore, while the autonomy of national parliaments is clearly recognised, they are at the same time required to comply with the democratic standards imposed by EU law. According to the IPU (Inter-Parliamentary Union) guide to good practice, the key characteristics of a 'democratic' parliament can be defined as follows:¹¹ Socially and politically *representative* of the diversity of the people, committed to equal opportunities, but also *accessible* through the involvement of the public in their work, including civil society organisations and associations (e.g. public participation in pre-legislative processes, notably through open consultations with interested parties). To be *accountable*, which entails accountability of parliament members (MPs) to the electorate and the citizenry at large, for their performance in office and integrity of conduct, against the exercise of arbitrary power. In addition, *transparency* is essential, which is a fundamental principle of all decision-making procedures and an essential part of ensuring both the legitimacy and the accountability of decision-makers. Finally, parliaments must be *effective* in performing their legislative and scrutiny functions in accordance with the democratic norms and values. At the local/regional and supranational level, effectiveness requires active and collaborative participation in the work of the legislative bodies in all levels.

This role is of enormous importance since democracy and the rule of law are core values of the EU's multi-level governance system.¹² and a prerequisite before acceding to the EU.¹³ The observation of the rule of law traditionally entails that governments administer laws accurately and impartially, as well as the safeguarding of accountability through institutions representing the citizens. Thus, adherence to the rule of law and the accountability of decision-makers constitutes an integral part of the democratic process, which ensures the legitimacy of legislative acts (Cygan, 2013). Consequently, potential threats to democracy in one Member State, could pose a challenge to the functioning of the EU as a whole. For instance, key EU policy areas such as the internal market and law enforcement cooperation, depend on respect for the rule of law and democracy across the Union. At the same time, the Lisbon Treaty introduced the principle of representative

democracy, stating that decisions are made as openly and as closely as possible to the citizens who are directly represented in the EP.¹⁴

In light of the above, the expectation born at the national level that parliamentary institutions hold an important role as guardians of European values under Article 2 TEU, will be assessed in practical terms. The assessment is conducted using the case-study of the House of Representatives in Cyprus, which due to its structural and constitutional challenges following the *de facto* partition of the island, may be considered susceptible to backslidings of the rule of law and democracy.

The house of representatives as a guardian of European values

Following the Lisbon Treaty, which explicitly recognised the democratic credentials of national parliaments and their contribution to EU affairs, it can be argued that national parliaments have a dual role to play in preserving EU values. Particularly, national parliaments have a ‘supranational’ role through their direct involvement in EU affairs and decision-making processes, including through the subsidiarity monitoring. The second concerns their ‘national’ role, in safeguarding and preserving EU values, either through the implementation of the EU *acquis* nationally or when acting in purely internal settings, not necessarily within the sphere of EU law. More specifically, this internal role of the House of Representatives consists in: (a) its internal organisation and composition of the Parliament and preparatory decision-making processes and (b) the proposition, drafting and implementation of national laws.

For the purposes of this article, only the ‘national role’ of the House of Representatives in safeguarding the European values internally is assessed, after first analysing the constitutional position of the House and its general functions in the governmental apparatus.

The structure and role of the national parliamentary institution

The government of the Republic of Cyprus is a Presidential Democracy, with a clear and strict system of separation of powers between executive, legislative and judicial powers (Pikis, 2006). Consequently, the President is elected by universal suffrage and appoints the members of the executive committee, the Council of Ministers, without any involvement of the legislature (Emilianides et al., 2015). Furthermore, the president and the ministers are not members of the House of Representatives. The structure of the Presidential Republic implies that the president has enormous executive power but does not necessarily control a majority in the House of Representatives.¹⁵

Therefore, the House of Representatives is the sole legislative body of the Republic of Cyprus, and its legislative function consists in establishing,

amending or repealing laws. According to the Constitution, the right to submit bills belongs to the Ministers and to propose laws to the parliamentarians, with the limitation that they do not lead to an increase in budgetary expenses.¹⁶ Therefore the Parliament can limit the executive power by amending or rejecting the said bills submitted by the ministers. Additionally, the House of Representatives can exercise its legislative power, not only in relation to general issues, but also in matters of a specific nature, such as in the formulation of fiscal policy, after approving government guarantees and loans, of budgets of legal entities under public law and fees and charges imposed by various authorities. It also has a decisive role in reforming the economic policy of the state, since the annual state budget is studied and approved by the Parliament.¹⁷ Therefore, although the principle of separation of powers defined by the Constitution, seems relatively strict, it is not absolute.

The House of Representatives currently functions under a unique constitutional structure based on the doctrine of necessity. The Constitution provides for a bi-communal composition of the government institutions and the parliament, yet following a 'constitutional crisis' the Turkish-Cypriots withdrew from the posts they held, causing certain state bodies to become fully unable to operate according to constitutional provisions (Emilianides, 2006). The Supreme Court relied on this context and applied the Doctrine of Necessity, going beyond the Constitution with a view to maintain constitutional order.¹⁸ According to Article 182(3) of the Constitution the participation of MPs from both communities in separate majorities is a prerequisite for any amendment (2/3rds from each community). Based on the doctrine of necessity, the Parliament can amend the Constitution and enact laws only by a simple majority of MPs of the Greek-Cypriot community (Papastylianos, 2023).

After the accession of the Republic of Cyprus to the EU in 2004, questions were raised on the need to amend the constitution to incorporate Community law in the Cypriot legal order. To reflect the post-accession framework, the Fifth Constitutional Amendment (Law 127(I)/2006) aimed at facilitating the exercise of the rights and obligations of Cyprus as an EU member state. It therefore introduced Article 1A of the Constitution, which provides that 'no constitutional provision can be considered to invalidate laws, acts or measures taken by the Republic and deemed necessary due to its obligations as a member state of the EU, or that it prevents the legal effect and implementation of Regulations, Directives or other acts of the [EU] of a binding nature for the Republic'.

Additionally, the Fifth Constitutional Amendment amended Article 179 to recognise the supremacy of EU law as set out in Article 1A of the Constitution. More specifically, paragraph 2 of Article 179 provides that:

no law or decision of the House of Representatives [...] and no act or decision of any organ, authority or person in the Republic exercising executive power or any administrative function shall in any way be repugnant to, or inconsistent with, any obligation imposed upon the Republic as a result of its participation as a member state of the EU.

It essentially gives effect to Article 4(3) TEU and the principles of sincere cooperation and supremacy of EU Law in the legislative processes of the parliament. EU law now has an intra-constitutional effect since it forms an integral part of the Cypriot legal order, and no constitutional provision may override or invalidate any binding provision of EU law (Emilianides, 2014).

As explained, due to the strict separation of powers system, the House of Representatives has no power to interfere with the direction of general policy on EU affairs, which falls under the exercise of the executive branch. It can, however, exert political pressure on the government to shape its positions by amending or rejecting bills enacted by the executive branch, and by shaping the state budget. Therefore, the House of Representatives, as the sole legislative body of the Republic of Cyprus, must comply with primary and secondary EU law in all its functions, at national and supranational level, including with general principles of Union law, whether these are expressly written in the Treaties or not, as defined in the national Constitution.

Internal organisation and composition of the parliament and preparatory decision-making processes

The House of Representatives must comply with and promote democracy and the rule of law, both through its direct participation in the EU decision-making process as well as nationally through the transposition of the EU acquis and as a guardian of EU values internally. The Cypriot Parliament is thus expected to comply with EU values in its internal organisation and structure, as well as during the preparatory decision-making processes. As such, the Parliament is also setting the correct 'democratic foundations' for the smooth drafting and voting of laws that follows.

The House of Representatives enacted its own Regulations on 19 December 1980, exercising the powers granted to it under Article 73(1) of the Constitution.¹⁹ However, the Regulations do not explicitly regulate parliamentary control of EU affairs, since it was established long before the accession to the Union. Thus, parliamentary scrutiny of EU legislative acts, apart from the provisions of the Lisbon Treaty that are directly applicable to the Cypriot legal order, is governed by parliamentary practice and not by legislation. The House of Representatives therefore has the right to regulate its own parliamentary procedure and functions. Until recently, these Regulations were the main legal source for the national procedures as well, including for the organisation of the Parliament, the parliamentary

procedure, and the legislative work, which led to gaps and weaknesses, preventing the effective application of the ‘democratic standard’ deriving from Article 2 TEU, particularly in terms of accessibility, accountability and transparency.

A milestone in the history of the Parliament is the adoption of the Code of Principles and Rules of Conduct for MPs, on 26 February 2021, which governs issues such as the wider behaviour of the deputies, transparency, the declaration of conflict of interest, as well as and MPs’ travels.²⁰ As noted in the report of the Parliamentary Committee of Institutions, Values and the Commissioner of Administration, the matter was studied in eleven sessions held between June 2020 and January 2021.²¹ The issue of establishing a code of ethics for the MPs had been ‘raised by the relevant committee of the previous Parliamentary Period, in the context of a related discussion on issues of irreconcilability and conflict of interest’. A related study, which was prepared in the context of this discussion, identified that the existing legislative framework for matters of irreconcilability and conflict of interest was insufficient and therefore needed revision, as also required by international obligations of the Republic.

The personal interests of a member of a Committee of the Parliament were examined until recently (February 2021) based on Article 44 of the Regulation, which states that ‘When a member of a Committee has a direct personal interest in the matter considered by the Committee, [they] must declare it to the President and to the members of the Committee at the beginning of the meeting or as soon as the interest becomes apparent from the debate’. Therefore, Article 44 of the Regulation does not provide for a public declaration of the interests in question. According to Article 52 paragraph (2)(k) of the Rules of Procedure as amended in 2019, any statements regarding the existence of a direct personal interest related to the draft law under consideration, made orally at the start of discussions before a parliamentary committee, must be included in the Committee’s Report to be submitted to the Plenary session. However, even in the case of a declaration of direct personal interest based on Article 44 of the Regulation, the MP concerned may continue to participate in the discussion and vote in the subsequent voting procedure. Therefore, the practical application of the rule comes into question, as the (lack of) strength of the enforcement, brings into question the actual effectiveness and meaningfulness of the measure (Nicole Bolleyer & Smirnova, 2017).

Despite the amendments, the lack of a comprehensive and binding Code of Conduct did not sufficiently preserve the ‘democratic standard’ deriving from EU law to prevent corruption (GRECO, 2020a). Repeated recommendations were also made by GRECO (Group of States against Corruption) for the need to establish a Code of Conduct, which would include clear guidance on cases of conflict of interest and related issues, which may arise during

parliamentary proceedings and which should be clearly stated in writing. For instance, cases not covered by Cypriot law included the acceptance of gifts and other advantages, such as secondary activities and financial interests, the misuse of information and public resources, the obligation to disclose external links and third-party contacts, and the rules for reporting suspicions of corruption even after the end of the parliamentary term. Additionally to the strengthening of preventive measures against corruption, it was also necessary to introduce corrective measures and penalties for those who commit such unethical behaviours and misdemeanours, to secure compliance with Article 2 TEU values of democracy and the rule of law discussed above.

The new Code of Conduct enacted in February 2021 is intended to cover the aforementioned gaps and contains rules that apply additionally to the provisions of the already existing Rules of Procedure of the House. However, it is doubtful whether it has completely achieved this objective. The Code contains five parts, the 'General Provisions', the 'Principles and Rules of Ethics and Transparency', the 'Gifts and Gratuities', the 'Obligation to Disclosure of Conflict of Interest', and the 'Investigation of Complaints and Application of Provisions of the Code of Conduct'. Firstly, a seven-member special parliamentary committee on Ethics (Ethics Committee) was established, consisting of the Committee's President and six other members, who are elected by the Plenary at the beginning of the relevant Parliamentary Period.²² As discussed below, the said committee has jurisdiction over the investigation of complaints against MPs and the general application of the provisions of this Code.²³

Importantly, the Code introduces for the first time into the legal framework a clear definition of personal and private interest, as well as of connected person. It is noteworthy that the Code eventually adopted a much more limited concept of 'natural connected person' than was originally proposed in the draft presented in early 2020 (Parliamentary Committees Service, 2020). Initially, the draft Code proposed a broad definition, which explicitly referred to relatives not only of the MP but also of his/her spouse, even from previous marriages, in friendly and professional ties and close circles. Ultimately, the interpretation of 'naturally connected person' was limited to the spouse, partner or civil-partner, children and close associates. Special reference is made to the principles and rules governing the exercise of the duties of MPs in Part II of the Code. Specifically, MPs are required to perform their duties based on the principles of selflessness, integrity, objectivity, responsibility, transparency, accountability, sincerity, honesty and confidentiality, as well as with respect towards all MPs and those invited before a parliamentary committee.²⁴

One of GRECO's repeated recommendations to Cyprus in recent years concerned the adoption of firm rules regarding the acceptance of gifts

(GRECO, 2020b). Significantly, the new Code establishes for the first time the gifts and gratuities of MPs. According to Part III of the new Code, MPs 'in the performance of their duties shall not receive or accept any gift or other gratuity, except for purely complimentary and/or low-value items of a commemorative nature that are offered in the context of customary practice, [...] in the context of official visits, meetings or parliamentary missions, provided that the estimated value of each such gift does not exceed €150'. At the same time, if an MP, during his/her term of office, receives any gift with an estimated value of more than €50, he/she must submit a written statement to the Ethics Committee, while at the same time the gift in question will be recorded in a name registry specially kept by the Parliament for each Session, with precise reference to the type, origin and exact or approximate value, as well as the date on which each gift was received by the concerned MP.

Regarding GRECO's recommendations for the adoption of rules covering cases of conflict of interest, the established Code introduced for the first time a clear definition of conflict of interest, and a clear guidance on its disclosure. It provides that every MP is subject to the obligation to disclose any existing or potential conflict of interest, which is caused as a result of the assistance or possible assistance of a certain capacity, or the occurrence of specific events directly related to a personal or private interest. Irrespective of Article 44 of the already existing Regulation, MPs must make an oral statement before the committee and then a written statement to the Ethics Committee about the personal or private interest in question. Contrary to the initial proposed draft Code, which referred to a personal or private interest that arose or will arise, which could influence the decision-making at 'any stage of the parliamentary process' leading to a conflict of interest, the adopted Code is limited to the declaration of conflict of interest 'an MP who, during the discussion of a specific draft law and/or other matter, finds and/or knows' about.²⁵ Furthermore, in addition to using more restrictive terms in the text, the Code avoids explicit reference to cases in which the MP does not know in advance of the existence and/or possibility of creating a conflict of interest. Finally, the Ethics Committee promptly publishes every submitted declaration of conflict of interest by posting it on the Parliaments' official website, which remains posted until the end of the relevant Parliamentary Period.

Additionally to the aforementioned provisions, in order to ensure the effectiveness of the Code and at the same time the implementation of the principles of accessibility, accountability and transparency under the 'democratic standard' discussed, it is necessary to have adequate monitoring and enforcement. Therefore, in Part V, the Code highlights the procedures for investigating complaints, and the penalties in case of violation of the rules. According to the Code, a complaint regarding 'an act or omission in terms of unethical behaviour is submitted by a citizen and/or by another

member of parliament' in writing and in person to the Ethics Committee, citing precisely the unethical behaviour. The Committee examines the complaint (if it has been deemed admissible in the first place) by calling before it the concerned MP. In case of violation of the Code, it proceeds to impose sanctions within 30 days.

Depending on the nature of the violation, its gravity and possible repetition, the Committee may impose one of the following sanctions: verbal reprimand, written reprimand, censure for observed unethical and/or inappropriate behaviour in general and/or in a specific case, summoning the MP to a public apology from the Plenary floor, summoning the MP to a written apology, which is read from the floor of the Parliament, and redress against the offended party, in the manner indicated, depending on the case. The Code avoids explicit reference to the cases where the return of resources or gifts that have been exploited is necessary, or to the prohibition of participation in specified parliamentary procedures for a certain period, which is often found in corresponding Codes of EU national parliaments or the EP itself.²⁶ Therefore the range of political sanctions seems to be more reduced than expected. At the same time, it would be useful to refer to the sanctions that may be imposed under general legislation (e.g. the Criminal Code), including imprisonment or a fine within the Code itself, to further strengthen its effectiveness.

The newly introduced Code undoubtedly covers the gaps of the previous framework to a large extent and helps to promote the EU values of rule of law and democracy in the internal procedures of the Parliament, as required by Article 2 TEU. However, although the principles of accessibility, accountability and transparency appear to be adequately covered by the new Code, the gaps identified may require further consultation to effectively address them and prevent a possible backsliding of the rule of law nationally. A divergence from the rule of law principle as protected under Article 2 TEU, deriving from ineffective and illegitimate internal settings of the parliament, could gradually impact the rule of law protection on a wider-Union-level.

Proposing, drafting and implementation of laws

Having discussed the role of the House of Representatives as a guardian of the Union values of rule of law and democracy in the context of its internal organisation and composition, emphasising on specific rules that could positively contribute towards that goal, the article proceeds to the corresponding analysis concerning the proposal, drafting and implementation of national laws. As discussed, these are the two sides of the same coin in terms of national parliaments' role in safeguarding EU values nationally.

After the accession of Cyprus to the EU, the House of Representatives has become the national parliament of a Union state with all the obligations and

duties that this entails. This resulted in the reformation and upgrading of the role of the Parliamentary Committee on European Affairs. In addition to its powers to monitor the adherence to the subsidiarity principle on the EU level, within the context of the exercise of parliamentary control, the Committee also examines the policies of the executive branch in relation to the general obligations for harmonisation and compliance with the EU *acquis* and policies (Emilianides et al., 2009). Specifically, the committee exercises parliamentary control by monitoring the course of implementation of the harmonisation of Cypriot legislation with EU law and the obligations arising from it. It can therefore notify the executive authority when it finds cases of non-compliance or when there is a delay in the harmonisation process.

As a result of the new obligations arising from the continuously evolving EU *acquis*, a mechanism was adopted for the monthly recording of all obligations created for the Republic of Cyprus regarding the adoption of Directives, which is successfully functioning (House of Representatives, 2023). These obligations typically lead to the requirement for submission of harmonising bills or regulations by the executive authority to the House of Representatives. Furthermore, each harmonisation bill submitted by the executive bodies is referred to the appropriate sectoral parliamentary committee for debate.²⁷ As soon as the competent committee completes the assessment, it prepares a report and promotes the relevant harmonising bill to the Plenary for voting.²⁸

It is therefore clear that the necessary legal framework and mechanisms are present for the Parliament to comply with and implement EU law, including with the values under Article 2 TEU and general principles, as determined by the CJEU. As such, the Republic of Cyprus has had no substantial cases against it and none regarding systemic violations of foundational values. However, Cyprus together with Portugal and Belgium, had the highest number of new cases against them in 2022, concerning late transposition of Directives according to the Commission's 2022 annual report.²⁹ Additionally, the same applies to delayed transpositions of Union Directives into national law for Cyprus for the years between 2015 and 2019.³⁰ Most of the new infringement cases initiated against Cyprus in 2022 concern the late transposition in the areas of Environmental policy, Justice, Fundamental Rights and Citizenship.³¹

Although the Republic of Cyprus does not appear to have serious violations of implementation and/or compliance with EU law, repeated delays in the transposition of EU law into national law undermine the effectiveness of the institution, a feature which is part of the 'democratic standard' for the institutions of the member states.

The role of the European Parliament in guarding European values nationally: supportive dialogue or independent supranationalism?

The EU Parliament has been characterised as a body that determined a completely new form of parliamentarism (Lord, 2003a), with its own peculiarities and original features. Due to these peculiarities that distinguish it in many respects from parliaments functioning nationally, the meaning of the democratic legitimacy and rule of law as well as the 'democratic standard' that must adhered to, may pose different elements from that of national parliaments discussed above. For instance, the legal positioning of the institution differs from that of national parliaments due to the absence of a strict separation of powers on the EU level, which results in the lack of establishment of effective mechanisms of inhibition and balancing of authorities (Pastuszko, 2023). On the contrary, different forms of controlling mechanisms exist that accommodate the cultural and substantive interests of all Member States (Moravcsik, 2002).

Despite the EP functioning outside the 'classic' understanding of the rule of law and 'democratic' standard applicable to national parliaments, it is clear from EU Treaty provisions that the rule of law has the 'rank of legally momentous and systemically protected value and should be respected at the EU and national levels' (Lord, 2003b). Indeed, the EP has on a number of occasions proven its commitment to protect and promote the rule of law and democratic values on the EU level, including through its own empowerment as the only directly elected EU institution. In other words, democratisation of European decisions is achieved by maximising the EP's influence through the adaption of its procedures in order to intervene more efficiently in the EU decision-making processes (Nathalie Brack & Costa, 2018). For instance, the EP has been actively promoting the expansion of the ordinary co-decision legislative procedure including on the EU budget, while proposing to be granted the right to initiate, amend or repeal legislation.³² Moreover, the Parliament may trigger the 'preventive mechanism' under Article 7(1) TEU concerning a 'clear risk of a serious breach' of the values of Article 2 TEU by a Member State by submitting a 'reasoned proposal' to the Council. The consent of the Parliament is then required for the Council to decide that this 'clear risk' exists.

Besides its significant role in promoting democracy and the rule of law on the EU level, the EP is strongly committed to promoting sustainable democracies around the world. It has further highlighted this commitment in several resolutions and has developed a range of tools for engaging effectively in global democracy support (European Parliament, 2022). The question however is whether the EP has contributed in any way to the promotion of the 'democratic standard' nationally, particularly with regards to the

internal settings of national parliaments and their compliance with EU values and principles, for instance through dialogue or other mechanisms.

The European Rule of Law Mechanism provides a process for an annual dialogue between the Commission, the Council and the EP together with Member States and national parliaments, civil society and other stakeholders on the rule of law.³³ The Rule of Law Report constitutes the foundation of this process. Other cooperation instruments include a permanent forum for political cooperation to deal with specific topics. Since 2005, MEPs and national MPs hold Joint Parliamentary meetings to deal with important issues affecting parliaments in the context of the process of EU policymaking and institution-building. The Parliament's Directorate for Relations with National Parliaments publishes an annual report on the relations between the EP and national parliaments which gives an overview of all activities and developments in this interparliamentary cooperation. According to the 2022 Annual Report, the topics discussed in the interparliamentary meetings included EU security and external action in response to the war in Ukraine, the post Covid-19 pandemic recovery, the state of the rule of law in the Member States, NextGenerationEU and economic recovery plans, and the outcome of the Conference on the Future of Europe (Directorate for Relations with National Parliaments, 2023). More specifically on the rule of law and democratic values, the EP's Committee on Civil Liberties, Justice and Home Affairs organises meetings for regular exchange between national Parliaments and the EP since 2020, to promote and safeguard the EU's common values in order to further the debate about the roles of the EU, the Member States and of the national Parliaments in this respect.³⁴ However, it seems that the 'democratic standard' that national parliaments must comply with, in relation to their internal functioning and organisation has not been the part of the deliberations, although the topic of conflict of interest for MPs in Cyprus has been discussed in several Rule of Law Annual Reports (Commission Staff Working Document, 2023).

Even though the EP seems to be functioning outside the 'classic' understanding of the 'democratic' standard applicable to national parliaments, it would be of great importance to provide guidance and support to national parliaments as to how to fully adhere to the 'democratic standard' under EU law as discussed above. The relevant tools to do so are already available and further developing, providing for more room for collaboration and dialogue. It would therefore be of fundamental significance to utilise these tools to further support national parliaments in their role as guardians of European values nationally.

Concluding remarks

Notwithstanding the integration process, national parliaments remain central to EU governance, especially after the Lisbon Treaty, which significantly increased their powers. As such, they remain constitutionally relevant to the EU decision-making process and continue to fulfil their primary democratic function of checking the executive. Now more than ever, in an enlarged and multi-layered Union that faces multiple crises, national parliaments play an important role in upholding European values, including democracy and the rule of law. A related example is the ongoing crisis of the rule of law, among others in the context of the judicial independence of the national judicial systems.

The same applies to the House of Representatives, which has the task of acting as the guardian of European principles, not only at the European but also at the national level. As analysed in the paper, the Parliament's internal role is divided into two categories. Starting with the internal organisation and composition of the parliament, the analysis concluded that the new Code of Conduct seems to fill important gaps of the previous framework and undoubtedly helps to promote EU values in the internal processes of the Parliament, as required by the 'democratic standard'. Due to the relatively recent conclusion of the Code, there are no clear indications as to its effectiveness, however the gaps identified may require further consultation to be addressed. Regarding the second part of the Parliament's national duties, namely the proposal, drafting and implementation of national laws, the paper concludes that the effectiveness of the institution is undermined by the large number of late transpositions of EU Directives into national law. While the appropriate legal framework exists in terms of upholding EU law and the foundational values, the repeated delays seem to undermine the 'democratic standard' and specifically the effectiveness of the institution.³⁵

Even when acting outside the scope of EU law, Member States need to have due regard to EU law and comply with the Union foundational values and democratic standards, including the House of Representatives as the government's legislative branch. It is therefore important for all national parliaments to act as policymakers to avoid a deeper crisis of democracy and the rule of law, which could quickly develop into a supranational crisis.

Notes

1. Article 12 TEU; Protocol No 1 on the role of National Parliaments in the EU, Article 3.

2. This period was previously six weeks which proved challenging for national parliaments; Convention Working Group IV on the role of national parliaments (Final Report: CONV 353/02).
3. Article 12 (b) and (f) TEU.
4. Ibid.
5. Protocol no. 2, Article 6 TEU.
6. Ibid, Article 7(1) TEU (yellow card procedure).
7. Ibid, Article 7(3) TEU (orange card procedure).
8. Judgment of 23 April 1986, C-294/83.
9. Judgment of 5 June 2023, Case C-204/21, *Commission v Poland* (Independence and private life of judges), ECLI:EU:C:2023:442.
10. For a comprehensive review of the constitutional landscape post-Lisbon, see Wouters et al. (2009).
11. 'Parliament and democracy in the twenty-first century: A guide to good practice', Inter-Parliamentary Union, 2006, as cited and further elaborated on by World e-Parliament Report 2008, United Nations (2008).
12. Article 2, TEU.
13. Article 49, TEU.
14. Article 10 TEU.
15. Articles 46–47 of Constitution of the Republic of Cyprus.
16. Ibid, Article 80.
17. Article 81 of Constitution of the Republic of Cyprus.
18. *Attorney-General of the Republic v Mustafa Ibrahim* [1964] CLR 195.
19. Ο Κανονισμός της Βουλής των Αντιπροσώπων της Κυπριακής Δημοκρατίας; Δημήτρης Κ. Μέλισσας, *Η Οργάνωση της Πολιτικής Εξουσίας στην Κυπριακή Πολιτεία: Το Εκλογικό Σώμα, Η Βουλή των Αντιπροσώπων* (Α. Σάκκουλας, 1996).
20. House of Representatives, Code of Principles and Rules of Ethics for Members of the House of Representatives (Code of Conduct) (2021).
21. Report of the Parliamentary Committee on Institutions, Values and Commissioner for the Administration on the decision of the House of Representatives on the Approval of the Code of Principles and Rules of Conduct for the Members of the House of Representatives (February 2, 2021) <<http://www.parliament.cy/images/media/redirectfile/232035.pdf>>
22. Members: Annita Demetriou, president (Ex officio), Nicos Tornaritis, Onoufrios Koulla, Aristos Damianou, Andreas Pasiourtidis, Nicolas Papadopoulos, Panicos Leonidou.
23. House of Representatives, Code of Principles and Rules of Ethics for Members of the House of Representatives (Code of Conduct) (2021), Part V.
24. The principles that apply to the House of Commons in the UK and are expressly stated in the corresponding Code of Conduct for Members of Parliament.
25. House of Representatives, Code of Principles and Rules of Ethics for Members of the House of Representatives (Code of Conduct) (2021), Part IV.
26. Rule 176 (Penalties) Paragraphs 5(e) and 7 of the European Parliament Rules of Procedure (2019-2024).
27. Article 73 (5) of Constitution of the Republic of Cyprus.
28. Article 78 of Constitution of the Republic of Cyprus.
29. Annual Report on monitoring the application of EU law 2022 <<https://commission.europa.eu/law/application-eu-law/implementing-eu-law/>>

infringement-procedure/2022-annual-report-monitoring-application-eu-law_en>

30. Annual Report on monitoring the application of EU law 2022 (Cyprus) <https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2022-annual-report-monitoring-application-eu-law/cyprus-2022_en>
31. The Republic of Cyprus had 29 new infringement cases in 2022 (26 for late transposition and 3 for incorrect transposition and/or incorrect application of Directives). This is the third highest number of new infringement cases during the year after Belgium and Portugal.
32. European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties (2022/2705(RSP)).
33. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en
34. <https://www.europarl.europa.eu/relnatparl/en/interparliamentary-committee-meeting-on-/products-details/20221122CPU40142>
35. MPs complained in February 2024 that the government is belatedly tabling EU legislation and then leaving parliament with a tight deadline <<https://cyprus-mail.com/2024/02/13/mps-complain-over-delays-to-transposing-eu-laws/>>

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