



Conclusions of the Conference

“The rule of law: a shared value for citizens in Europe”

Bratislava, 06/11/2019

The conference “The rule of law: a shared value for citizens in Europe” was organized by the Institute for European Democrats (IED) at the Pan European University in Bratislava on 7 November 2019. Over 50 participants, including University students, representatives from several embassies in Bratislava and journalists attended the conference. Its topic was chosen to discuss the new approach of the European Commission, which aims at strengthening the EU rule of law framework following recent backsliding within the Union. The Commission’s new initiative was presented in the [“blueprint for action”](#) published in July 2019.

Addressed to the wider public, the event sought to start a dialogue with citizens, especially young people, in Central Eastern Europe, and brought together policy makers, civil society representatives, journalists, academics and students with an interest in discussing the importance of the rule of law for democracy and people's daily lives from a political, legal and economic perspective.

The conference was structured in three panels dealing with, first, the meaning of the rule of law, its importance for citizens in Europe and its current state of affairs within the EU, second, the Commission’s most recent initiative and, lastly, what the promotion of a rule of law culture, which the Commission has initiated, entails as well as how it can be pursued.

What is the rule of law, why does it matter for citizens in Europe and what is the current state of affairs?

The rule of law is a **broad, multi-faceted** and essentially **contested concept**. According to **Jakub Jaraczewski**, Legal Officer at Democracy Reporting International, neither a global nor a European definition exists. There is considerable diversity of opinion as to the precise meaning of the concept in the modern interdisciplinary literature and even among normative based international organisations. Also, there are differences between EU countries’ exact understanding of the rule of law, following their different cultural and legal traditions. The fact that both, the EU Treaties and EU *acquis communautaire*, only **superficially** deal with the rule of law adds up to the difficulty regarding the clarification of the concept. In contrast, **Jaraczewski** argued that the meaning of “human rights”, which enjoys prominence in several regional and international agreements, as well as “democracy” is far more clarified than the one of the rule of law. Under this premise, it is a challenge for the EU as a supranational entity to formulate a uniform definition of the rule of law that is indeed “common to all Member States”. The European Court of Human Rights (ECtHR) and the Venice Commission have been essential in streamlining the different conceptualizations and creating a **European understanding of the rule of law**, which was largely adopted by the European Commission.

As a consequence, certain indispensable elements have been developed to constitute the **core meaning of the rule of law**. These core elements of the EU rule of law are:

- **the principle of legality** which implies a transparent, accountable, democratic and pluralistic process for enacting laws;
- **the principle of legal certainty** which implies that rules are clear and predictable and cannot be retrospectively changed;
- **the Prohibition of arbitrariness of the executive** meaning that any intervention must have a legal basis,
- **independent and impartial courts**, including judicial review of administrative acts;
- an **effective judicial review** including respect for fundamental rights;
- **equality before the law**.

No disagreement exists, however, regarding the **overwhelming importance** of the rule of law for the EU, the Member States and its citizens' everyday life. The rule of law is, according to Art. 2 of the Treaty on the European Union, alongside democracy and human rights, a **European value** upon which the EU is founded, and which is common to all EU countries. As such, it is a defining concept of the EU's constitutional character. A strong rule of law framework is essential for maintaining a **common legal space** where EU law is effectively applied, mutual trust between Member States in an area of freedom, security and justice enhanced, **corruption** levels lowered, a **functioning internal market** ensured and where the **financial interests of the EU** are respected. Besides these legal considerations, the empirical data is straightforward. According to the [Eurobarometer Survey](#) on the rule of law conducted by the Commission this year, 85% of respondents throughout the EU believes that the rule of law is important. In addition, numerous academic studies have established a **strong correlation** between high rule of law records, viable and sustainable democracies, clean anti-corruption indicators, the respect for human rights and human liberties as well as a competition-based, thriving and prosperity generating market economy. As rule of law deficiencies in one part of the Union have consequences on other parts as well, the legal, political and economic basis of **the EU as a whole is as strong as its weakest Member State**. Therefore, the rule of law lies in the **common interest of the EU institutions, countries and citizens** alike. At the same time, the Union's ability to deal with rule of law issues internally is not only essential for the EU itself, it is also crucial for its successful values and norms promotion beyond its borders, which is stated as an explicit objective of EU external policy, both in the enlargement context and within the framework of the Eastern Partnership. If the EU wants to continue to be a coherent and credible external actor as well as a transformative power, which induces positive changes effectively, it will eventually have to follow the [advice of the European Parliament from 1998](#): namely to **put its own house in order before giving lessons to others**.

In this context, the past and current rule of law and anti-corruption backsliding is extremely worrying. The Union's fundamental values and principles, including the rule of law, are experiencing serious challenges. Recent events in some Member States revealed, among others, a **dysfunctional separation of powers, weakened constitutional courts** and an **undermined independence of the judicial process**. More concretely, during the past years, the public has been witnessing dismissals of court presidents [“without any specific criteria, without justification and without judicial review”](#); [threats against a Supreme Court judge of disciplinary actions for complying with an order of the European Court of Justice](#); the promotion of a

“vision” that [“judges should always be on the side of the state ... the conduct of judges is dangerous when the judges turn against the legislative and executive authorities”](#). Attempts to **diminish pluralism** as well as **weaken civil society actors and independent media** further undermined the rule of law. These initiatives also come at a time of

- **rising Nationalist populism in Europe**;
- a new divide between those feeling left behind or pushed away by globalization, Europeanisation, liberalization and digitalization, and those who managed to adapt to the new realities, the so-called metropolitan liberal elites;
- a return in Western Europe to deep-seated prejudices about “the East” of Europe and in Eastern Europe the emergence of a deprecating political discourse that the “the West” is only about abortion, gay marriage and LGBT rights.

Slovakia, in the opinion of **Alojz Baránik**, Member of the National Council of the Slovak Republic, is “certainly not a rule of law country”, but one where a corrupt police, prosecution and judiciary system is under the “total control of the politicians, some of whom are now suspected criminals” and where the investigative journalist Ján Kuciak was murdered. In this particular case, the European Parliament has pushed for the establishment of an international investigation team, whose investigations are finalized and waiting for reaction on behalf of the Slovak judiciary. **Baránik** further argued that in the light of these developments, “the EU has long overlooked and misjudged the facts on the ground in Slovakia” and displayed a lacking willingness for confrontation with the local political elites.

According to **Andrzej Potocki**, Vice-President of the European Democratic Party (EDP) as well as Vice-President and International Secretary of the Polish Party Stronnictwo Demokratyczne (SD), the national laws passed by the Polish government clearly and concretely contradicted Poland’s obligations of ensuring an independent and effective judiciary resulting from European Union Law.

In Bulgaria, which together with Romania is subject to the Cooperation and Verification Mechanism (CVM), following **Hristo Ivanov**, “a lot of measures have been taken, but no progress made”. In particular, **Ivanov** referred to the reform of the Bulgarian judiciary through the introduction of the computerized allocation system of judges to specific cases. Its effective implementation and monitoring by the EU was torpedoed by the political interference of Bulgaria’s Commissioner in the elaboration of the CVM, which did not mention the ongoing mimicking of reform.

And yet, the respect for the rule of law is not just a problem in Central and Eastern Europe. According to the [Eurobarometer Survey](#), a large majority of respondents throughout the EU believes that the situation in their country with regard to **the respect of rule of law principles needs at least some improvement**. 96% in Portugal, 97% in Greece and 98% in Cyprus believes that the situation of equality before the law needs improvements. And while perceptions are not an absolute indicator and the sensibility of citizens in one country may be stronger than in another, these numbers show that **the respect for the rule of law is an EU-encompassing issue**.

The EU Commission “blueprint for action” – a right step into the right direction?

In light of these developments within the EU, in July 2019, the European Commission, as the guardian of the treaties, has put forward [innovative actions](#) for the short and medium term to **enhance the EU's "rule of law toolbox"**. Also, in [her agenda for Europe](#), the newly elected Commission President, Ursula von der Leyen, has emphasized that **"strengthening the rule of law is a shared responsibility for all EU institutions and all Member States"**. [Finland's priorities](#) as the current holder of the Presidency of the Council of the EU confirms that the rule of law is ranking very high on the EU agenda until this very day.

The Commission's [blueprint for action](#) rests on three pillars: **"promotion"**, **"prevention"** and **"response"**. Following the most recent Eurobarometer survey, according to which over half of Europeans do not feel sufficiently informed about the rule of law, the Commission intends to, first, **promote a rule of law culture** with the goal to overcome the lack of information at professional levels and within the general public at large. Second and in accordance with the principle of subsidiarity, the Commission pursues to **strengthen EU capacity to monitor** developments in Member States. The so-called Rule of Law Review Cycle, which foresees increased monitoring and intensified dialogue, aims at preventing rule of law violations. This new monitoring mechanism is intended to have a broad and specific rule of law scope as well allow for mutual exchange of information between Member States. Third, in cases where rule of law violations have happened, the Commission wants to continue to **make use of the existing response mechanisms**, while pursuing a strategic approach to infringement proceedings and introducing clearer timelines in Art. 7 of the Treaty on the EU to allow for a more coherent and concerted approach by EU institutions.

Last but not least, the Commission makes reference to its [proposal from 2018](#) for a regulation to ensure the **protection of the EU budget** and reflects about the need for extending this protective approach to other EU policy areas as well. The Commission proposal essentially entails **a budgetary rule of law conditionality** that could be applied towards EU Member States. EU funds could completely or partially be suspended in cases where EU countries show generalized rule of law deficiencies which affect the protection of the EU financial interests. The set-up of an internal rule of law conditionality in itself would be innovative, since "conditionality" has so far been mostly reserved for non-EU countries; yet expanding a rule of law conditionality to other EU policy areas beyond the protection of the EU financial interests would potentially be ground-breaking.

The Commission blueprint has widely received a positive response, among others, from the European Parliament. According to **Ivan Štefanec**, Member of the European Parliament from the Group of the European People's Party (EPP), the Commission initiative is "an important step in the right direction". At the same time, he proposed further improvements. He advocated for a **personal responsibility of a member of the Commission** in charge of following up on rule of law procedures, a faster mechanism to implement procedures following up on rule of law infringements, which ultimately will need a Treaty change for which the European Parliament is open, and a stronger cooperation between EU institutions, including the European Anti-Fraud Office (OLAF) and the European Court of Auditors. At the same time, the blueprint has also raised considerable question marks. Some have criticized the overall approach of the Commission as ["brushing aside reality"](#), while the statement of the newly elected Commission President that ["nobody's perfect"](#) has been regarded as signaling a shift towards appeasement. Others have questioned to what extent increased dialogue and enhanced cooperation are able to counteract currently ongoing evolutions in the EU. In a [legislative resolution](#) from April this year the European Parliament proposed a regular assessment on the model of the **Cooperation**

and Verification Mechanism of Member States' compliance with the Copenhagen Criteria. Question marks remain as to whether the new Rule of Law Review Cycle will turn out to be an effective preventive mechanism or just another tool for mimicking political success.

Finally, other challenges exist that remained untouched upon by the Commission blueprint. **Štefanec** mentioned malpractices in the use by Member States of EU funds in agriculture and highlighted that in Slovakia 75% EU financial support goes to big farmers, although funds are primarily directed by the EU towards helping small farmers. The cause for these maldistributions is corrupt Slovak institutions. **Štefanec** further expressed his hopes connected to the establishment of the **European Public Prosecutor (EPPO)** and the resulting implementations regarding the rule of law in the area of the protection of EU financial interests. Another area of concern are tax frauds, both within and outside the EU. The recommendations of the European Parliament encompass cashless payment, more transparency and mandatory exchange of information between tax offices. Until now, these recommendations have been left unanswered.

Promotion a rule of law culture – what and how?

Ultimately, strengthening the rule of law is a complex and multi-faceted endeavor, which calls for actions on several fronts. Enhancing the rule of law will also require **creating democratic resilience** with a top-down as well as bottom-up approach which is independent from any structure or organization. The Commission acknowledges this by making reference to creating a rule of law culture and emphasizing that [“the best guarantee for the respect of our common values is the existence of a robust political and legal culture supporting the rule of law in every Member State.”](#) While a robust rule of law framework is necessary for achieving strong rule of law records, it is not a sufficient condition. What is needed is a holistic approach, one that views the rule of law within a broader framework of societal change and stresses the equal role of state officials as well as members of society in creating a strong rule of law. It is a people-centered approach in the sense of a rule of law of, by and for the people.

According to **Andrzej Potocki**, following their communist past, the culture of the rule of law is unpopular in the Central and Eastern European Countries (CEECs). Their societies are characterized by lacking trust towards fellow unfamiliar society members and state institutions. Yet, the existence of such a societal trust is the fundament of today's modern society and for the creation of a “rule of law culture”. As a consequence of this historical heritage, until today, less than 30 years after having gained freedom from the respective communist regimes and less than 20 years after accession to the EU, the populations of the CEECs are displaying a stronger willingness to engage within the framework of small local communities or families, and a lower level of ability to create a civil society. This characteristic of the CEECs' post-communist societies stands in contrast to the ones of “old” Western European countries, which have deep-rooted democratic traditions. **Potocki** argued that an essential element to ensure trust as well as a sense of solidarity among different groups of society, and for promoting a “rule of law culture”, is **education**. This political and citizens education would ideally lead to “citizens taking things into their own hands and decide”.

Currently, however, deficiencies in terms of education of EU citizens about their identity as Europeans are essentially contributing to national governments' unwillingness to adhere to European Union law and to the image of the EU as constantly interfering in their own, internal,

affairs. Also, the peoples' yearning for a sense of **identity** is not satisfied by the EU. Potocki argued that the return of nationalism in Europe is the cause of the EU's currently lacking ability to give its citizens "the tools to define themselves as Europeans". Especially in Poland, Hungary, Czech Republic and Slovakia the EU and its institutions are perceived as an "outer being". At the same time, deficiencies in education exist about what Europe essentially is, which is directly related to the inability "to connect the history of the last 75 years to the present" and realize that "an united Europe is the only way" for its members to become "civilized, economically prosperous and democratic countries". What is more, the EU does not have a common vision of the future of the Union. The **ideas regarding the future of the EU are divided** between those who crave for a great federalist project in the spirit of a "United States of Europe" and those who envisage a Europe in the spirit of the 19th century nationalism, where national competences remain predominantly in the Member States.

Regarding the current state of affairs and given the EU's limited competences, **Potocki** advocated in favor of an **educational process coming from the Member States**. At the same time, he warned against the expectation of the EU that it should act as a "policeman" and intervene at all times when there are problems with regard to the rule of law in Member States. Such an expectation goes against the EU Treaty provisions, including the principles of conferral, subsidiarity and proportionality, unless the Member States decide to give up more of its sovereignty rights to the EU. In either case, in the fight against those who do not obey the rule of law and anti-corruption standards the EU and Member States alike have to make use of the existing instruments, adhere to the rules they want to promote. They cannot argue "that the end justifies the means because there are some means that spoil the end". Potocki argued that although these requirements impose limitations, "these limitations will pay out in the future because it does not only give us moral but also legal right to act".

In the same vain, **Hristo Ivanov**, Chairman of Da, Bulgaria Movement as well as former Minister of Justice of Bulgaria, argued that "the Commission will not come to save" the individual EU countries. Rather, EU citizens need to **develop a sense of citizenship and consciousness regarding the rule of law**, become proactive and hold their governments as well as the European Parliament accountable through active participation in democratic elections. Only continuing efforts on behalf of the citizens in this sense can lead to sustainable results and lasting progress. At the same time, the general broadness of the concept of the rule of law poses significant challenges to the promotion of a rule of law culture among EU citizens: **"the rule of law lacks human stories and the abstractness of the concept makes it difficult for citizens to connect it to their refrigerators"**. Ivanov moreover suggested to further develop the EU to an entity that goes **beyond a mere Union of national governments**. According to him, as evidenced with regard to the CVM, political interference in the Commission's monitoring and decision making in the areas of corruption and rule of law is a recurring practice employed by Member States to deviate public attention from existing severe issues. At the same time, the Commission would always try to "be good friends" with the majority of governments, many of which, as in the case of Bulgaria, are "associated with high-level political corruption".

Conclusions and recommendations

The Union's present legal toolbox is unable to tackle currently ongoing rule of law and corruption backsliding within the EU and its rule of law framework is half empty rather than

half full. In light of the complexity of the concept and the fact that safeguarding the rule of law requires a concerted effort on behalf of more than one actor on numerous fronts, the Commission “blueprint for action”, while innovative and an important leap forward in the right direction, seems to fight mosquitos with cannons. As such, the Commission initiative must not represent the preliminary end of the debate within the EU about how to effectively safeguard the rule of law in the long term but should serve as a fertile ground for an all-encompassing dialogue. Protecting the rule of law as one of the founding values of the EU requires continuous, enhanced and cumulative engagement on behalf of the supranational institutions of the Union, the Member States and EU citizens.

The broadness and overwhelming importance of the rule of law is neither reflected in the EU *acquis communautaire* nor in the way the Commission reacts in matters concerning rule of law infringements. EU institutions would be well advised to enrich the political discourse about the rule of law with human stories and the EU law with more detailed, concrete and palpable provisions on the rule of law. This would not only contribute to more clarity within but also beyond EU borders with a view to the enlargement and Eastern Partnership context. The resulting uncertainty about the precise definition of the rule of law in the past opened up Pandora’s box of political leeway. While the cases of Poland and Hungary suggest otherwise, the European Commission has, both in the internal as well as external EU context, all too often taken political decisions, at times turning a blind eye, where a clearer positioning and tougher measures would have been necessary to ensure effective reform. At the same time, in the area of anti-corruption, EU countries’ attachment to their sovereignty rights and political intervention prevents the EU from fully exhausting its legal competences in the first place. As evidenced by the scarcity of legally binding anti-corruption instruments and the newly set up European Public Prosecutor’s Office (EPPO) the potential of the Union to tackle corruption at a supranational level remains untapped. Preventing Member States from regular political interference through EU institutions for their own benefit as well as installing more rigorous monitoring and effective enforcement instruments within the EU will ultimately require a Treaty change that bridges the currently existing Union of sovereign countries towards a more federalized entity where the Member States decide to give up competences in favor of the supranational bodies. Yet, departing from the application of “double standards” and promoting a stronger European identity is possible without any further due. In particular, contributing to EU citizens’ self-perception as Europeans would progressively cut the ground away from the narrative of the EU as “an alien that is constantly poking its nose in the affairs of individual EU countries”.

The Union’s powers in the area of rule of law are restricted following the legally enshrined principles of conferral, subsidiarity and proportionality as well as political reasons. In this context, neither the Member States nor their internal actors can realistically expect the EU to interfere whenever things are going (really) bad. Rather, EU countries are called upon to “do their homework”, which includes accurately applying and enforcing European, national and local law as well as prosecuting those who do not. At the same time, safeguarding the rule of law cannot justify all means. It is imperative that the competent national authorities play by the same set of rules they want to see implemented. The Member States would furthermore do right in triggering an educational process addressed towards its population with the aim of developing an understanding of the historical significance of the European integration process and the rule of law as well as a sense of citizenship among citizens and a rule of law consciousness.

Yet ultimately, it is the fundamental duty of all citizens as the only source of direct democratic legitimation to become proactive and shape their own future. Besides referring to fundamental rights and freedoms, citizens should be aware of the existence and importance of citizenship duties. This involves being constantly informed about ongoing events, participate in the elections and keep their national parliaments and the European Parliament accountable. The European values of democracy, human rights and rule of law as well as the achievements on the European continent since the end of the Second World War must not be taken for granted.

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