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The Rule of Law in the EU and the New Initiative - What Has Changed?

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Abstract

"The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values, which are set out in Article I-2, are common to the Member States. Moreover, the societies of the Member States are characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men." What remains unclear is **why the rule of law in Article 2 is defined as a value, and several provisions later it appears as a principle**. The use of the term *value* instead of the term *principle* points to a possible intention for introducing a new separation between the fundamental EU values, on one hand, and the fundamental legal principles of the EU, on the other. In March of 2014, when **the former President of the EC Barosso** introduced the new framework for safeguarding the rule of law in the EU, he said, *inner alia*, that: "the rule of law is one of the fundamental EU pillars…a pillar on which the Union is built." What becomes obvious is that the EU gave primacy not only to the globally accepted model of the rule of law, but more importantly, it defined the improved, European model of the rule of law. The paper aims to enter in a broad analysis of the different views on the rule of the law in the EU, the UN, OSCE and the Council of Europe, and to give a certain input for a new initiative in context of the rule of law debate within the EU. The paper will also try to answer the question what this new initiative specifically contains, which are its challenges, what is its goal and what the EU will gain from its materialization.

Key words: rule of law, legal state, constitutional principle/value, Court of Justice of the EU, legality, legal security

1. Rule of Law, Legal State and *Etat de droit* in the EU context – Basic notions

With the end of the Cold War, the international organizations, same as the national states, regardless the nature of their economic and political systems, intensified their interest and support for the principle of the "rule of law". There was practically an unanimous opinion that the rule of law, which was most often equalized with the concept of "rule of legislation, and not of people" is a *good thing*.[1]

In the EU, this principle served as a foundation for the overall work of the organization in the light of the decision of the European Court of Justice in the case of *Les Verts*,[2] because: "everything that the Union represents comes from the treaties agreed on the basis of the free will and democracy of all Member states".[3]

Although the specified court decision does not explain precisely the origin and the meaning of the rule of the law at the Community level, it is still clear that the Court views this principle in a positive light, but also views it as a fundamental principle for the entire constitutional frame of the former European Community. In the same line with this opinion is the stance presented by the Attorney General Mancini, who believes that the Court equalizes the rule of law with the basic court protection or the judicial control.[4]

The first conclusion that comes from the initial understanding of the formulation contained in the Court's decision, that "the Community based on the rule of the law…", is that we are talking about a legalistic and procedural formulation that is closely connected with the traditional and mutual principles of legality, of court protection and of control over the constitutionality and legality, which, as principles, are applicable for all modern and democratic legal systems. It is interesting that majority of the legal theoreticians and judges in the EU stand in defence of the narrow and pretty formal approach to the principle of the rule of the law where "crucial for the rule of the law is…the possibility for independent courts to reassess the decisions adopted by the public authorities".[5]

What we must not forget when we speak about the so-called "European model of the rule of law" is the fact that it is under a strong influence of the three most representative legal traditions in Europe – the British, the French and the German.

The British, or better said, the English legal tradition is the oldest tradition that perceives and applies in theory this principle. In his famous work „Introduction to the Study of the Law of the Constitution (1885)", Albert Ven Dicey identifies three fundamental meanings of this principle. First, the rule of the law means that "no one can be punished, humiliated or in other way left to suffer without this to be regulated with a law, within the established legal system, and without a decision by the court

of the country.[6] " This implies directly that "any man, regardless his position in the community, is subject of the law and the authority of the judicial bodies".[7]

Dicey views the principle of the rule of law through the traditional principles of legality and equality before the law. But, what makes the Anglo-American concept of the rule of law different from the French or the German is its evident distancing from the classic German or French administrative law by giving supremacy to the case law when it comes to the human rights and freedoms. Further on, Dicey's thoughts go in direction of defining the formal-procedural approach vis-à-vis the essential approach.

According to the "formal school", the rule of law is a set of norms, set of regulations that make the core of the legal system. These norms must be clear, transparent, adequately explained to the public, relatively stable, and the process of their adoption must be led in accordance with the general rules of openness, stability and precision.

On the other hand, the contextual aspects of the rule of law indicate the need of an "easy" access to the courts which must be independent and impartial, and must limit the discretionary power of the police, the public prosecutor and the other agencies and bodies that protect the system from criminal activities.

The formal school is not focused only on the earmarks of the legal norms, but also on how they are read and how they are applied within the laws. In other words, the formal concept of the rule of law often implies coordination with certain institutional demands (such as the principle of division of power, existence of independent judiciary, control of the constitutionality and legality by a separate body etc.), as well as with individual procedural demands (right to defence, right to efficient legal remedy, right to free access to the courts etc.)

Besides the formal school, the rule of law is also studied by the so-called material school, which focuses much more on the content, i.e. on the substantive goals of the law, than it is on the form itself. According to the followers of this school, the rule of law demands not only coordination with certain formal demands, but it also insists on the elements that concern the "political moral" such as democracy and the fundamental civil rights. Dworkin, for example, says that the rule of law, as a concept based on the human rights and freedoms, strengthens the moral and the individual political rights, whereas the rule of law and the justice are viewed as separate and independent ideals.[8]

We should mention that in modern times there is practically no analysis of the rule of law that takes into consideration only the formal, or only the essential aspects of this principle. The majority of the authors become very pragmatic when they pay equal importance both to the formal, and to the essential aspect. Lord Bigham, for example, speaks of eight sub-rules that make the rule of law. Most of them concern the formal "qualities" of the legal system and the legal norms, i.e. their accessibility and their applicability, although the author does not deny the substantial elements of the rule of the law when it comes to the adequate protection of the fundamental human rights.

In 2005, the UK adopted a Constitutional Reform Act, which says in the Chapter 1 that: "This act does not influence the existing constitutional principle of the rule of the law or the existing constitutional role of the Lord chancellor with regard to this principle." It is interesting to mention that this act does not offer a new definition for this principle, but it concludes that "the rule of law continues to be a complex, and in certain sense, very imprecise concept".[9]

Unlike the British legal tradition that lacks clear constitutional concept for the rule of law, the **German concept of the legal state (Rechtsstaat) became a "central constitutional principle"** that contains specific formal and essential components on which the entire legal and political system in Germany is based. Still, we should mention that unlike the federalism, democracy and the social state which are explicitly guaranteed as fundamental institutional principles in the heart of the German constitutional order, the legal state is not explicitly highlighted as a compulsory principle for the Federal Republic, but it is more a compulsory principle for the regions (Lander), according to Article 28(1): "the constitutional order of the states (regions) must be in accordance with the principles of the republican, democratic and social state founded on the law, within the meaning of this Constitution".[10]

The difference between the formal and the essential elements is also visible in the concept of the legal state as it is in the principle of the rule of law. The formal (procedural) elements cover the following: legality, legal certainty, proportionality, ban for retroactive applicability of the laws, etc. The judicial control of the legality and of the constitutionality, particularly the control in cases of violation of the constitutionally guaranteed freedoms and rights is also closely connected with the concept of the legal state.

The essential elements of the legal state are mainly in connection with the respect and protection of the human rights and freedoms, because the ultimate goal of the German "free liberal-democratic" legal order is to

protect the fundamental freedoms and rights, by putting the emphasis on the respect for the human dignity. The German Constitutional Court had a particularly important role in this, because by using the well-known court activism this court knows very often to fill in the legal gaps in the system with its own understanding of the principles.

In France, the concept of Etat de Droit was made popular by the distinguished authors and theoreticians such as Duguit and de Malberg who aimed to promote the idea for court control at "statutory" level.[11] This concept practically disappeared from the legal discourse in France in 1920 when it became clear that this reform simply cannot pass, which practically explains the lack of any formal reference to this principle in the 1958 French Constitution.

It is interesting to mention that the practical meaning of this principle in France got on strength with the introduction of the mechanism for constitutional control over the legality of the acts, a reform that was formally incorporated in 1958, and this term made a real come-back in the 1970-ties.

For a long time France was unable to find a term that would be equivalent to the English principle of *the rule of law*, i.e. for the German principle of *legal state*. This was explained with the existence of liberal definitions of the three antic terms present in the French legal vocabulary: Etat, République, and Constitution. Rousseau, for example, says that "any country in which the rule of the law governs" can be described as a *Republic*.[12] Similarly, the term of Etat (state) was used to describe the phenomenon of submitting the political power under the rule of the law.

According to Monesquieu, the state, in its essence, can be described as "a society in which laws exist." Therefore, there is no need for an additional concept, such as the Etat de Droit, because there is a conceptual difficulty in speaking about a "state" which, in fact, was not really a state governed by the rule of the law in that time.

The term *Etat de Droit* which appeared later, and its popularity particularly in the 19th century through the term *Etat legal*, which was considered a contrast of the *Etat de Police*, is explained with its close relation with the German concept of legal state, i.e. with the similar political situation in the Weimar Republic in the period from 1919 to 1933 and in France in the same period.

At that time, the French term Etat Legal was "unbreakably linked with the parliamentary sovereignty and with the parliamentary democracy." In both Germany and in France the constitutional control of the legality of

the acts had a problem with efficient implementation which made the legal authors, as well as the judges, preoccupied with developing social principles within the administrative law in order to protect the individual rights and interests of the citizens from potential misuse of power by the administrative authorities.

2. Rule of Law in the UN, the Council of Europe and OSCE-

Main highlights

The rule of law is a category that is particularly interesting for the case-law of the Court of Human Rights in Strasbourg. This court believes that that the rule of law is a principle that is inherent for all articles in the Convention. The Strasbourg case-law applies the rule of law in number of cases, mainly taking into consideration its formal aspects: the principle of legality, the legal security, division of power and equality before the law.

On the other hand, in the Preamble of the UN Universal Declaration for Human Rights, the rule of law is used in order to promote number of principles that exist in different contexts. For example, if the UN reports from 2002 and 2004 are compared, one will see that the first report insists on independence of the judiciary, on independent institutions for human rights, defined and limited powers and on fair and open elections, while the second (2004) report focuses on the quality of the legislation, supremacy of the law, equality before the law, accountability before the law, legal security, procedural and legal transparency, division of power, etc.

The Resolution of the UN Commission for Human Rights of 2005 focused on the division of power, supremacy of law and on the equality before the law. Kofi Annan gave a very narrow definition for the rule of law in his 2004 report, in which he said that "the rule of law concerns the principle of governing in which all people, institutions and subjects, public or private, including the state itself, are accountable before the laws which are publicly announced, equally applied and independently assessed, and which are in accordance with the international norms for the human rights and standards. This principle also demands application of adequate measures based on the principles of supremacy of law, equality before law, accountability before law, fair trial, division of power, participation in the process of passing laws, legal certainty, avoiding partiality and procedural and legal transparency. According to the UN, the national legal framework of the rule of law ought to include:

- Existence and application of a Constitution or its equivalent, as a highest legal act in the country;

- Clear/precise and consistent legal framework and its application;

- Strong, well-structured judicial, governmental and human rights institutions;

- developed civil society that strengthens the rule of the law, the policies, the institutions, and the processes as core values of the society in which the individuals feel safe and secure while the institutions feel accountable;

- Existence of rules and norms that legally protect the system in which the disputes are resolved in a peaceful manner, and in which everyone who has harmed the law, including the holders of power, will be held accountable.

On the other hand, in the project *World Justice*, the rule of law is defined through existence of a fully functional system based on four main criteria:

1. The government and its agencies, official representatives and structures, as well as the individuals in the government are accountable before the law;

2. The laws are clear, published, stable and righteous; applicable for everyone and everything, they protect the fundamental rights and freedoms, including the security of the people and their property;

3. The process in which the laws are applied, administered and put into force is accessible, fair and efficient;

4. The justice is served promptly by professional, moral and independent representatives in a neutral/impartial fashion, in an efficient manner, with adequate sources that reflect the community.

The OSCE also has its own doctrine for the rule of law contained in the commitments of this organization and related with the application of the rule of law. According to the 1990 Copenhagen Document, "the rule of law…does not simply mean a formal legislation that provides regularity and consistency in the achieving and application of the democratic order, but it also means justice based on recognition and full application of the supreme value of the human identity and its guarantees through the institutions, by providing a framework for its full expression." As the document outlines, democracy is an inherent element of the rule of the law.

3. The New Initiative for the EU Rule of Law

The 1997 Amsterdam Treaty brought new, very important provision in the EU law which stipulates that "the Union is founded on the principles

of freedom, democracy, respect for the human rights and the fundamental freedoms, the rule of law, on principles that are common for all Member States." By precisely defining that the EU is founded on, and is obliged to respect these rules, the Treaty, in fact, stands firmly in defense of the fundamental, i.e. defined principles which "underlines their importance and the character of the political and legal system as a whole."[13] Another important change that the Amsterdam Treaty brought is the provision that enables the EU to sanction its Member States if they are found guilty of serious and systematic violation of the above-listed principles. Due to still not very clear reasons, the authors of the now failed Constitutional Treaty decided to reassess the provisions which stipulated the key EU principles in 1997. It was decided that the Union should not define these principles, but it should accept a much broader formulation for the joint principles, by giving advantage to the concept of common values.

The 2007 Lisbon Treaty, which entered into force on 1 December 2009, practically took over this formulation previously contained in the Constitutional Treaty, which means that the **EU Treaty today contains a provision known as Article 2, which reads that:**

"The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values, which are set out in Article I-2, are common to the Member States. Moreover, the societies of the Member States are characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men."

What still remains unclear is why the rule of law in Article 2 is defined as a value, and several provisions later it appears as a principle. The use of the term *value* instead of the term *principle* in article 2 of the Treaty points to a possible intention for introducing a new separation between, let us say, the fundamental EU values on one hand, and the fundamental legal principles of the EU on the other. Despite this vague terminology, one may conclude that article 2 of the EU Treaty represents a positive momentum in the EU development in sense that the EU citizens can welcome the explicit connection between the EU constitutional system and the key traditional values of the western constitutionalism.

On the other hand, by pointing out these abstract ideals, the EU treaties are not considered particularly innovative when compared with the national constitutions.[14] We should note that the rule of law is not even mentioned as a principle. In most cases, the principles of the democracy and the respect for the fundamental rights are closely connected with the rule of

law. The rule of law is formally contained in the Preamble, in the Article 2 of the EU Treaty, but it also appears as a fundamental principle on which the newly-established European External Action Service is based upon. It is also present in the preamble of the EU Charter of Fundamental Rights. Although this principle is part of all major EU documents, we should still mention that the EU leaves a broad space for new considerations in context of the rule of the law aimed at its upgrading and improving.

In March of 2014, when the former President of the EC Barosso introduced the new framework for safeguarding the rule of law in the EU, he said, *inner alia,* that: "the rule of law is one of the fundamental EU pillars…a pillar on which the Union is built." He also added that "the rule of law helps uphold all other values. To put it simply: fundamental rights would be an empty shell without the rule of law", concluded **Mr. Barosso**. On the other side, the former Commissioner for Justice Viviane Reding has also added that "the respect for the rule of law is a precondition for the protection of all other fundamental values on which the Union is based." What becomes obvious is that the EU gave primacy not only to the globally accepted model of the rule of law, but more importantly, **it defined the improved, European model of the rule of law**.[15] This model, besides the elements of this principle present in all definitions of the international organisations, including, the supremacy of the law, as well as the fundamental rights and their protection, contains elements that are unique for the European model of the rule of law, ranging from fair application of the law, efficient use of the EU rights, to anti-corruption, i.e. fight against corruption in the EU external relations. What is the context of this new initiative for the EU rule of law?

The new initiative can be best described as a new "**pre-Article 7" procedure that follows three stages.**

1. First, the Commission, on the basis of a thorough fact-check of the situation, will assess whether there is a systemic threat to the rule of law or not. If there is, the Commission will initiate a dialogue with the Member State concerned, by sending its opinion – a "rule of law warning"– and substantiating its concerns. It will give the Member State concerned the possibility to respond.

2. In a second stage, unless the matter has already been resolved, the Commission will issue a "rule of law recommendation" addressed to the Member State. It will ask the Member State to solve the problems identified within a fixed time limit. This recommendation can be made public.

3. In a third stage, the Commission will monitor how the Member State is implementing the recommendation. If no solution is found within the new EU rule of law framework, Article 7 will always remain the last resort to resolve a crisis and ensure compliance with European Union values.[16]

The entire process is based on a **continuous dialogue between the Commission and the Member State concerned, keeping the European Parliament and the Council informed.**

Faced with a rising number of "rule of law crises" in a number of EU countries, the Commission adopted this new "pre-Article 7" procedure last March in order to address any instance where there is a evidence of a systemic threat to the rule of law. Article 7 of the Treaty foresees initiating a separate procedure within the Union when its fundamental values are harmed. In this context, the protection of the rule of law in the EU leads to protection of all values outlined in the Article 2 of the Treaty. The new framework for the rule of law in the EU introduces the vision of the Union for the future of its justice. What comes next? A vision would not be a vision if it did not highlight the challenges that should be faced**. In this context, three challenges for the EU justice are identified: trust, mobility and development.**

1. Trust-is not something that is gained with a decree. It demands action.

2. Mobility-the European citizens, same as the economy, feel more and more the advantages from the rights defined in the Treaty, although there are certain problems in this field. The justice policy ought to be used in context of improving the free movement of the European citizens and even to intensify it by eliminating the barriers that prevent it.

3. Development-the activities in the field of justice ought to continue in direction of economic revival of the Union, in direction of its development and fight against unemployment. There must be structural reforms that will enable the justice system to deliver justice in full trust, in support of the other EU policies. In order to deal with these challenges, the EU must launch an action aimed at consolidating of what has been achieved so far, to codify the law and the case law and, when necessary, to launch new initiatives. EU's ambition, when it comes to the rule of law and the justice policy, ought to have the same strength as did the initiative when the new mechanisms for financial solidarity, joint fiscal rules and joint rules in the banking field were implemented.[17]

But, nowadays Article 7 is widely considered as a "nuclear option", even by a former EC President, Mr. Barosso. It is very obvious that countries seem too scared that sanctions might also be applied against them one day. Sometimes the so-called regional solidarity (especially in Central and Eastern Europe) might also play a great role. In this context, having in mind the opinions of prof. Dimitry Kochenov and prof. Laurent Pech, Commission's new pre-Article 7 procedure "is anything but revolutionary".

In essence it merely requires any 'suspected' Member State to engage in a dialogue with no new automatic or direct legal consequences should the Member State fail to agree with any of the recommendations adopted by the Commission. Undoubtedly, **Article 7(1) TEU already and necessarily *implicitly* empowers the Commission to investigate any potential risk of a serious breach of the EU's values by giving it the competence to submit a reasoned proposal to the Council should the Commission be of the view that Article 7 TEU ought to be triggered on this basis.** The criticism expressed by the Council's Legal Service, which has criticised the Commission for overstepping its powers, would therefore appear particularly misplaced. The Commission's framework is procedurally sound, no Treaty change is required and for the first time, a wide range of expert bodies is to be consulted: so far so good one may be tempted to say.[18]

The non-legally binding nature of the 'rule of law recommendation' to be addressed to the authorities of the country under scrutiny, and the non-automatic recourse to Article 7 TEU should the recalcitrant Member State fail to comply, further increase the likelihood of ineffective outcomes. The Council's negative response to the Commission's proposal leaves one rather pessimistic about the chance of ever seeing the Commission activating its new rule of law framework. Indeed, rather then supporting the Commission's rule of law framework, the Council decided instead to establish an annual rule of law dialogue to be based 'on the principles of objectivity, non discrimination and equal treatment of all Member States' and to be 'conducted on a non partisan and evidence-based approach'. The Council's response is as disappointing as it is unsurprising considering the reported unease of several national governments at the idea of letting any independent EU body looking into rule of law matters beyond the areas governed by EU law.[19] Very interesting view on this question give also the well-known prof. Jan-Werner Müller, who has pointed out that "the EU is a part of the problem for democracy in Europe today, not part of the solution". The core of Article 7, said prof. Müller, consists of a mechanism to insulate the rest of the Union from the government of a particular Member State deemed to be in breach of fundamental values. It enables a kind of moral quarantine, not an actual intervention. Article 7 can only bring about direct political change in the form of a "normative isolationism" of the EU and its Member States vis-á-vis one "rogue State". It is, of course, a reasonable hope that a country will get the message; it is about intervention, after all.[20]

The instruments the Commission has at its disposal are often seen as a not a good match for the specific political challenges to liberal democracy. Infringement proceedings can only be based on EU law-which often does not cover the relevant areas of the rule of law what makes much harder to address systematic problems. As an alternative to going "nuclear" or to infringement proceedings which can address the real political challenges only very indirectly at best, some legal scholars have proposed that national courts, drawing on the jurisprudence of the ECJ, should protect the fundamental European rights of Member States nationals who also hold the status of EU citizens. As long as Member States institutions can perform

the function of guaranteeing "the essence" of fundamental rights of EU citizens, as set out in the Charter of Fundamental Rights of the EU, there is no role for either national courts or the ECJ in protecting the specific status of men and women as Union citizens. But if such institutions are hijacked by an illiberal government, Union citizens can turn to national courts and, ultimately, the ECJ, to safeguard what Court itself has called the "substance" of Union citizenship.[21] The aim of this "reverse Solange"-logic is not to bring in the ECJ, but to strengthen national liberal checks and balances in times of political crisis.

We might conclude several things. First, all efforts to protect rule of law in the EU are somewhat arbitrary. Even if standards could be specified a little more precisely, there is no methodology that could guide judgments about individual cases.

Second, in constitutional law, it is necessary to take into account not only the face value of a provision, but also to examine its constitutional context. The fact that a provision also exist in the constitution of another country does not mean that it also "fits" into any other constitution. Each constitution is the result of balancing various powers.[22]

Third, as an alternative option, the EU could have in mind creating an entirely new institution which could credibly act as a guardian of Europe's acquis normatif. The so-called "Copenhagen Commission", with mandate to offer comprehensive and consistent political judgments, as a reminder of the "Copenhagen criteria", analogous to the Venice Commission in the Council of Europe, could be seen as one very good option. Forth, following the advice of the so-called "Copenhagen Commission", the European Commission should be required to cut funds for state capital expenditure, or impose significant fines. The choice is more likely to be between accepting the inevitable risks of sanctions and a cowardly, creeping cynicism that would slowly erode the Union as a whole from within.

4. Conclusion

Many centuries ago Aristotle had said that "the rule of law is much better than the rule of man". Since then, the meaning of this principle remained unchanged. What also remained unchanged is the inability to completely formalize this principle in one definition. It is believed that this is an impossible task for any person or any institution, mainly because of the fact that this principle varies and depends on the specific historical context of the national legal, political and social development. Still, it is generally accepted that the contemporary concept of the rule of law "has developed as a concept separately from 'the rule of man', including the system of governing based on non-subjective rules opposite to those that are founded on the power and on the absolute ruler."

The concept of the rule of law, from today's perspective, is "deeply connected with the principles of justice, the ideal for accountability and righteousness in the protection of the citizens' rights and in the protection and sanctioning of those who have harmed these rights."

It is a fact that in the last few years the EU has put a strong emphasis on the meaning and on the application of the rule of law as a European value. On 11 March 2014 this was clearly articulated in the Communique between the Commission and the other EU institutions, which not only set clear guidelines for the application of the rule of law, having in mind the EU Treaties, but it **also offered new institutional mechanisms for protection of the rule of the law, which can be activated when there are clear indications that a certain Member State is systematically violating the rule of law.**

On the other hand, despite the positive aspects of this new initiative, it seems that the criticism in the EU about the rule of law does not end. This criticism mainly comes from the authors like Nikoladis and Kleinfild, who believe that it is clear that the European Commission continues to understand the rule of law in a very narrow sense of the word, although the Commission continuously highlights the need of "monitoring the activities and decisions of all holders of authority, both in the public and in the private sector, including the public and government administrations, as well as the need of judiciary control over their work."

Even the new measures launched by the Commission cannot overcome the serious remarks regarding the functioning of the rule of law in the EU system. These authors believe that the Commission "failed to admit that 'the rule of law' is not only in the law *per se*, but it is in the will of the subjects to respect the law, which, in fact, leads to a social fact." According to them, "by failing to take into consideration the social sources (social facts) of "the rule of the law", the EU fails to become a champion in this field *vis-à-vis* its Member States."

ENDNOTES:

[1] It would be fair to outline the different, diametrically opposite opinions for the so-called dark side of the rule of law. See: **Mattei, U. and Nader, L. (2008), Plunder: When the Rule of Law is Illegal, Blackwell Publication.**

[2] **Case 294/83 Les Verts v. Parliament (1986) ECR 1339, para.23.** We should mention that also before this case, in the case of **Granaria (1979)** the court put a reference saying that: "the principle of the rule of law in context of the Community." Further on, the decision reads: "The legal and the judicial system of the community

established with the treaty point that the respect for the principle of the rule of law in context of the community applies to the people who, according to the Community Law, have the right to deny the validity of the rules that demand legal action…". It is interesting to see that in the German translation of the court decision, the principle of the rule of law is translated as Rechtsstaatlichkeit.

[3] See: http://europa.eu/abc/treaties/index_en.htm

[4] This position can be more broadly be found in the French legal literature, as a "right to decision", which often is understood not only as a right to legal remedy, but also as a right to access to independent court body, legal aid, fair trial, and finally, the right to trial in a reasonable timeframe. Although the Court is preoccupied with the individual right to efficient court protection, which is a general principle of the EC/EU law also determined in Article 6 and Article 13 of the ECHR, the Court still views the rule of law in a much broader way.

[5] See: **Jacobs, F. (2007), The sovereignty of law: The European way, Cambridge University Press, p. 35.**

[6] See: **Dicey, Venn, A. (1897), An Introduction to the Study of the Law of the Constitution, MacMillan, 5th Edition, p. 179.**

[7] See, ibid, p 187.

[8] See: **Dworkin, R. (1985), A Matter of Principle, Chapter 1, "Political Judges and Rule of Law", Harvard University Press, p. 11-12.**

[9] Another provision incorporated in 1992 concerns the principle of the legal state, but only with regard to the relations with the EU. Namely, article 23, paragraph 1, reads that: "in context of establishing the United Europe, the Federal Republic of Germany shall participate in the development of the EU, which is founded on the democratic, social and federal principles, on the rule of the law and on the principle of subsidiarity, as well as on the guaranteed protection of the fundamental freedoms and rights which are fundamentally comparable with this fundamental law…"See: **BVerfGE 23(1).**

[10] See: **Peerenboom, R. (2004), Asian Discourses of Rule of Law, Routledge, p. 79.**

[11] Ibid, p. 79.

[12] See**: Rousseau, J.J. (1762), Contrat social, Livre II, Chap. VI.**

[13] See: **Pech, L. (2010), 'A Union Founded on the Rule of Law: Meaning and Reality of the Rule of Law as a Constitutional Principle of EU Law', 6 European Constitutional Law Review, p.359.**

[14] For example, the article 1 of the Spanish Constitution reads: "Spain is a social and democratic country, led by the rule of law, which protects the freedom, justice,

equality and the political pluralism as highest values of its own legal system", article 3 of the Croatian Constitution etc.

[15] On the other hand, we should say that certain theoreticians believe that the EU still does not have a clear, defined definition for the rule of law. Nicoladis and Kleinfild believes, for example, that "by leading the enlargement process, the EU must define "the rule of law" much more explicitly, which is something that has not been done yet." See: **Nicolaidis, N., Kleinfeld, K., (2012), "Rethinking Europe's "Rule of Law" and Enlargement Agenda: The Fundamental Dilemma". Jean Monnet Working Papers 08/12, New York University, http://www.jeanmonnetprogram.org/papers/12/1208.html.**

[16] See: http://europa.eu/rapid/press-release_SPEECH-14-202_en.htm.
[17] See: http://europa.eu/rapid/press-release_SPEECH-14-202_en.htm.
[18] http://eulawanalysis.blogspot.mk/2015/01/from-bad-to-worse-on-commission-and.html.
[19] ibid
[20] See: Jan-Werner-Müller, "Should the EU Protect Democracy and the Rule of Law Inside Member States?", available on: https://www.princeton.edu/~jmueller/ELJ-Democracy%20Protection-JWMueller-pdf.pdf.

[21] Armin von Bogdandy, Matthias Kottmann, Carlino Antpőhler, Johanna Dickschen, Simon Hentrei, and Maja Smrkolj, "Reverse Solange-Protecting the Essence of Fundamental Rights against EU Member States", in: Common Market Law Review, vol. 49, (2012), p. 489-520.

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