The meaning of the Rule of Law

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Abstract

This essay discusses about the European Rule of Law by focusing on some historical and conceptual features of this foundational principle of the Union. Although many recent events are mining the base of the European structure, as it will be shown with some examples, the EU Commission is trying to avoid the detachment and the return to a nationalistic vision of the problem, by the creation of a new framework to reinforce the rule of law. Moreover we will present two different cases from our origins countries, France and Italy, which, according to us, could be linked, from divergent perspectives, to the rule of law and other subjects related to this.

KEY WORDS: **Rule of Law; European Union; vagueness ; difficulties; development of the Union**.

Origins

By Alban Heron

- The origins by the terminology of the rule of law

To discuss about the Rule of Law, according to my opinion, it is important to start to speak about our topic showing the origins of the concept. Probably a good approach could be to stop to analyse for few lines the terminology of the topic.

The first step was made by the Court of Justice, when it was not yet created the European Union, but there was the European Community. The terminology rule of law appeared for the first time in a case, called *Les Verts* (from the name of the political ecological association in France) in 1986; this case was about a procedural question, it means that the Court had to decide if it had the right competence to judge about a private party or if only the National Court could have the right to make a sentence about it.

What it's possible to observe in this decision is that the Court allowed the European Parliament to produce effects for private persons. The court for the first time of the European history stated that the European Community was a "community based on the rule of law".

This term was a first important step which underlined the importance of the rule of law in the European Community but it was not enough, to create a Union it was fundamental to continue in that direction showed by the Court.

That is exactly what in 1992 the European Community decided to do in the Treaty of Maastricht. The treaty fixed the 3 pillars of the future European Union: the concept of democracy, the respect of the fundamental rights and a system based on the concept of Rule of Law. We can see the important

pushed forward of the Rule of Law, following the case of the Court of Justice of 6 years before. This treaty reinforced the cooperation among the 12 States moving from a Community to the creation of an Union.
In 1992, the principle of the rule of law became a real formalized constitutional concept and started to be present in a lot of different subjects, like the economy, the external policy etc.
During the years following this Treaty, the growing Union set up other treaties in the sense to reinforce the base of his building and in particular the rule of law. In this sense is really vital the presence of the topic in the articles of Treaty of Lisbon.

- The philosophers who forged the idea of Rule of Law

Looking at the path of the European Union, we could think that the concept of Rule of Law is a recent topic but this is not correct.

We can start by a come-back more than 2000 years ago in Greece with Aristotle and his ideas especially about the policy. He had interesting theories because he said that the political system could not be compared with a monarchy in the sense that, in a political system (like in Greece at that time) the link between the institutions and the free citizens were made with equality. The justice is essential for him as the law has the rule in a political system. Aristotle continued the work of Plato who said "*Where the law is subject to some other authority and has none of its own, the collapse of state, in my view, is not far off, but if the law is the master of government and the government its slave, then the situation is full of promise and men enjoy all the blessings all the gods shower on a state*".
More recently, in Great-Britain John Locke, during the XVIIs century talked about the natural aspect of the Human person whit natural rights that the legislator didn't create for him. He was an enemy of the absolutism of the State and consequently he put the bases for a State, governed by the principle of the rule of law.
Other authors like, the Italian philosopher Cesare Beccaria in his book in 1764 (*Dei Delitti e delle pene* in Italian) showed interest in the issue of the rule of law. Beccaria advanced that there should be no infraction for any crime if this was not intended in the law. This appearance of the legality is in total equation with the Rule of Law.
Another important historical example, if not the most relevant in Europe, was the French Revolution in 1789. One of the goal of the Revolution was to institute an "*état de droit*" (in english: rule of law) in France and so an equality among all the citizens (peasantries as kings) in front of the law. Before this Revolution, in fact, the king had an arbitrary power and a dominant position; he represented the justice so no condemnation could be pronounced against his person. The

"*Declaration des Droits de l'Homme et du Citoyen*" had the goal to make everyone equal and even if it took a lot of time before to be really obliged to respect, it was a first really big step towards the possibility to have a system based on the rule of law. As said before, this way of thinking didn't just arrive by accident, it was the fruit of one century of illuminist ideas from some of the most important philosophers of that time in France like Montesquieu, Voltaire etc. who forged our Western conceptions.

In the XX century, one of the most important researcher about the rule of law in the European Union was the German, Walter Hallstein, a professor of law who became the first President of the European Commission between 1958 and 1967.

Hallstein used for the first time the term "*Rechtsgemeinschaft*", in French "communauté de droit". This kind of terminology arrived really early in European Union history, and to better explain the importance of these words, the first steps of a legal base of Europe (and not only some points in the Treaties), it's important to know from where these thoughts derive.

- <u>The different historical conceptions of the rule of law in Europe</u>

The different histories, social aspects and culture of all the parts of the European Union, lead to a variegate conception of rule of law. In this study it's fundamental to report the three big school of the rule of law in Europe: the British one, the French one and the German one. In the next lines, we will show how the idea of the rule of law work and how can be divergent from the fact of the different traditions in each States.

Starting from the British conception, the most relevant difference between British and German/French law is that they don't have a written constitution, so the divergent between Common Law and Civil Law; the British constitution comes from the custom with a balance between the different powers, which are not specialized, for example the king has a partial legislative power as the Lord's chamber and the commune' chamber; this is the principle of non-plurality of powers. In the British case, the rule of law contains the power of the Parliament.

Albert Venn Dicey, a famous lawyer from Great-Britain who wrote in 1885 *Introduction to the study of the Law of the Constitution*, shows that in the British case, the rule of law, which protects against arbitrary, comes directly from the judges' decisions. So with this protection, deriving from the jurisprudence and customs, a written Law doesn't seem necessary. Such a conception took of course time to be applied but the British model is very old, and it's difficult to change. Dicey showed the importance to have an equality among all the citizens and so governing by legal norms which would fight against the arbitrary. Dicey was very critical against continental law and

especially French law that for him was not very helpful to protect citizens especially through the Human Rights because it was very limited, while the British concept of the rule of law was more general and according to him it could protect better the citizens.
The Dicey's explanation could be really good but of course it could not work for all the States. The States had already some organs and a different conception of law. For the States with an approach more written of the Law, such a system could not be changed from a day to another, every system has an history, and to put a system in a State that is not in adequacy with this model would have problem to work, according to my opinion.
Even if the British concept is not recent, only in 2005 in the Constitutional REFORM Act (CRA) the principle of Rule of Law was settled really as a constitutional principle.

Moving from the British's idea of rule of law to the German's one, the topic assume the name of *Rechststaat*. This term came from Wilhelm Petersen, that in 1798 created this locution and it was not, as many customs say, Kant the inventor. The definition of this *Rechststaat* was seen like an organisation in which people lived together and where each member of this structure was supported and fostered in the freedom and the comprehension of everybody. The strength of the term is also highlighted, to work it needed a mechanism who has to obliged such a power, we could observe here the German model, based on a written constitutions. This model is in opposition of the absolutism state or with the model called "police State" (*Polizeistaat*) who is based on unlimited powers for the executive power (in opposition of the power of Parliament and so legislative power in United Kingdom).
The first real goal of the *Rechststaat* was to protect citizens against the administrative decisions which could be arbitrary or illegal; there was no question of human rights in the first period of the German rule of law. The aim of this system as it's observable nowadays, it appeared in 1949 with the new constitution after the Second World War (*Grundgesetz*). In this new legal system we had some formal aspects, like in the past, and there were added also a substantive components. The Constitution was based in fundamental principle like the democracy, the Republic and the social state under the rule of law. They also put the principle of equality in front of the justice for all citizens. Some European Countries which followed this model are: Spain and Portugal.

The last model to examine is the French, *Etat de Droit*. The name *Etat de Droit* derived directly from the German name *Rechststaat*. This concept put the State as the guarantor of the respect of the Human Rights of everyone, following the *Declaration des Droits de l'Homme et du Citoyen*, established in 1789, during the French Revolution. Other important principles to respect were added successively. Carré de Malherbe, a famous philosopher talked about the judicial review of statutory

law, during the time this concept disappeared until the 5th Republic and the constitution of 1958, in which the model became more formal with controls a priori by the constitutional council; later in 2012, the control changed in a posteriori by the judge, after the European Court's condemnation. At the contrary of Germany case, the term *Etat de Droit* is not in the French constitution, it is just the fact of customs which the judges have to respect even if it is not a written rule. Traditionally, we see the French concept as a compromise between British and German notions, but we can probably find more similarities with the German one in the sense that the formal theory is the base of both (with particular matters for the French one), or the fact to have a written Constitution, or it is also important the fact to have based the law in common concepts like equality, legality, dignity of the person etc. These are the main reasons for why we generally refer to these two visions as the Continental system in opposition of the British notion of Rule of Law.

The difficult research of an exact Definition of the Rule of law in Europe

By Alessia Azzini

- Various references to the concept of rule of law in European Organizations and Institutions

Before starting to understand deeply the concept of the rule of law, trying to find the most important features and aspects of this, with the goal to have a general framework in which the Rule of law is inserted, according to us it is important to begin our discussion listing 3 of the most important institutions and organizations that in their statute give importance to our subject of research, permitting to have a quite general view.

The rule of law's tenet is present at national and global level in the international treaties.

Proceeding from the United Nations, the world reference of the International system, the concept of rule of law appears in the Preamble of the Universal Declaration of Human Right[1], settled in 1948. Here the notion, as summarized in a 2005 resolution, mainly underlines the traits of : the separations of power, the supremacy of the law and the equal protection under the law[2].

[1] For the full text: http://www.un.org/en/universal-declaration-human-rights/

[2] The ex former UN Secretary-general Kofi Annan in 2004 in a speech offered a broader definition of rule of law "*The 'rule of law' […] refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency*."

Amongst European organizations, the Council of Europe refers to the rule of law in the Preamble of the Statute of the Council of Europe[3], and in the Preamble of the European Convention on Human Right[4]; however according to a study of the Venice Commission, affirming in the statements that the rule of law is "a part of the core mission of the Council of Europe" and quoting many documents referring to this concept, does not permit to enumerate a list of key rule of law preliminary conditions; in this way it seems that the Institution left a sense of uncertainty. This aspect is better clarified by various case-law of the European Court of Human Rights and it has been elucidated in this sense: being the rule of law inherent in all the articles of the Convention, this allow it to have also a substantive nature.

In the European Union, this supranational, "new" and "dynamic" organization, the idea of the rule of law is affirmed in the Preamble to the Treaty on European Union (TEU), as well as in the Preamble to the Charter of Fundamental Rights to the European Union, and even if not always expressively, in many national statements. According to art. 2 of the TUE, but also art. 6 and 7, the European Union is grounded in many values, among these, the rule of law is one of the most complex, due to the numerous meanings that the term could assume, and furthermore due to the peculiarity to include in itself formal and substantive notions and many other aspects that will be showed in the next paragraph .

- Looking for a definition of Rule of Law

"*The rule of law is an institutional ideal concerning the law. Owing to its normative nature, in fact it has been held to mean different things at different times and in different contexts. Its complexity and contestability is due to many causes, including the interweaving of conceptual, historical, philosophical meanings. There is also the fact that the concept belongs in multiple domains, from law to political morality (...)*". This extract written by Gianluigi Palombella could help to evidence the enormous size of the concept and to remark how it's difficult to enumerate all the features of the rule of law if scholars or researchers want to enter deeply in the sense of the term. For this reason the aim of this part of the essay has not the presumption to write a definition of the rule of law but to take into accounts some relevant aspects from our perspectives.

The decision to leave a sort of vagueness in the European treaties about the rule of law, according Palombella is due to the fact this articulated concept needs institutional settings that are variables in time and in contexts in which the notion is applied. As showed above, the rule of law finds its first

[3] For the full text: http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680306052

[4]For the full text: http://www.echr.coe.int/Documents/Convention_ENG.pdf

roots in Aristotle's thinking and in the years the tools that humans created to live in society are developed and the idea has changed, too. In order to avoid misunderstandings and doubts, looking at the writings of scholars, judges and others, it seems as if they are agree on the core meaning of the rule of law and the elements contained within it. Observing two brief definitions[5] we found in our research and comparing these with the Rechtsstaat concept of rule of law , it's possible to list the main elements of our topic that include:

- *Legality, or supremacy of the law*; so the legal order must be followed by everyone, individuals but also public and private authorities. This aspect, thanks to the development of the international system (so, not focused anymore only on national legislation and common law) and the importance gave to the international organizations to the rule of law, is expressed in the global level with the locution "pacta sunt servanda".
- *Legal certainty*; it's really important that law is accessible, easy to understand, precise and clear in order to avoid incongruence in the legal system. But an important dimension of this concept is also to not be inflexible, and in case of conflicts between Courts it's important to achieve case by case a major coherence. For this reason it is possible to say that these first two features of the rule of law (supremacy of the law and legal certainty) presuppose an implementation of law in practise and so as expressed at the beginning of this paragraph, a sort of open definition of the term.
- *Prohibition of arbitrariness*; so it's important the judge's discretion but he should not exercise it in an arbitraries way.
- *Access to justice before independent and impartial courts*; the role of the judiciary is fundamental in a state or in a system based on the rule of law, so the principles of independence and impartiality, resumed in the broader term separation of powers, are

[5] The first definition by Maravall (as mentioned in Rule of Law and Democracy: Inquiries into Internal and External Issues, Gianluigi Palombella, Leonardo Morlino, pag. 47) says that "*such a minimal definition of the rule of law refers to the implementation, even if only partially and in a territorially limited fashion, of laws that (i) were enacted and approved.....; (ii) that are no retroactive...,but general, stable, clear, and hierarchically ordered...; (iii) applied to particular cases by courts free from political influence and accessible to all, the decisions of which follow procedural requirements, and that establish guilt through ordinary means*.". The second definition by Tom Bingham (as mentioned in a report of the Venice Commission about the state of the rule of law) affirms that rule of law means "*all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts*".

fundamental in a democratic system, even if the concept of rule of law is not valid only for this kind of regimes[6].

- *Respects for human rights*; during the years the concepts of rule of law and human rights are developed in the same path, but it's important to not consider the two dimensions as two sides of the same *unicum*, because they have precise features and even if some aspects of the rule of law, such as the right to access to the justice, the right to be heard etc, appear also in the Human Rights declarations, this does not mean that they are the interchangeable. In the case of EU constitutional law, there's a distinction among the rule of law from other foundational principles, but the violation of any of these mean that the others cannot be adequately followed, for this reason some researcher, as Laurent Peck, talk about a "mixed model"[7].
- *Non discrimination and equality before the law*; the people has not to be discriminated on the bases of the rights and freedom listed in the II chapter of the Charter of fundamental rights of the European Union and in others Charters, and to everyone has to be guaranteed the principle of equality in front of the law.

These are some necessary ingredients to take into account if we want to have a basic idea of what rule of law concerns.

In the European vision even more, the rule of law presents distinctive characteristics. It can be considered as:

- *a Fundamental principle*; the European Union, in fact is founded, as enumerated in the art. 6(1) TEU, on the principles of liberty, democracy, fundamental rights respects and the rule of law. These values, shared in all the member states, are the constitutional "pillars", the base of the Union and with the goal to protect them, the Countries have assigned: to the European Court of Justice this task and to the Commission the role of guarantor of the Treaties.
- *an Umbrella Principle*; as said above, a precise meaning of the rule of law lacks in the EU context, this has obliged the EU courts to flesh the principle out, as it can be observed, again, in the case Les Verts; here it's pointed out, in the formula "*Community based on the rule of law*", that the rule of law is an "umbrella constitutional principle"

[6] As studied in: *Rule of Law and Democracy: Inquiries into Internal and External Issues*, Gianluigi Palombella, Leonardo Morlino, or in the book *The authority of law, The rule of law and its virtue* written by Raz, the rule of law finds application also in Hybrid and authoritarian regimes.

[7] *The Rule of Law as a Constitutional Principle of the European Union,* pag. 52 http://jeanmonnetprogram.org/wp-content/uploads/2014/12/090401.pdf

which has formal and substantive dimensions. The central aim of the EU Court, in fact, is to guarantee the subjects of the existence of this "special" legal order, focusing on the formal principles, but also on the substantive limitations, that means the protection, in particular, of the fundamental rights.

- *a Politic – Benchmark*; in the EU constitutional framework, one important goal is to enlarge the Union, and the rule of law, as the others structuring principles, in this instance, is one of the criterion to assess the actions of its members and candidate countries. This trait is rather unique in the international system. The Art.7 (TEU) empowers the Council to sanction those member countries that do not respect the principles of art. 6 (1) TEU; unfortunately until now this art. (the 7th) has had only a symbolic meaning, it's true that each State must be ready to defend the legitimacy of its actions, especially in the case of some infractions, but as it's possible to observe in the paragraph of this essay, *The weaknesses of the rule of Law,* the member Countries still continue to not respect some fundamental rules, without to be punished with strong sanctions.
- a Foreign Policy Objective; this characteristic has been and still is the major objective of the EU in his external and international actions. Observing from this point of view, the rule of law loses its feature of constitutional principle and it assumes more the trait of an exportable value that the EU has to promote abroad its borders. In this sense the rule of law is mentioned not only in the Treaties, referring to the EC's policy of development and cooperation in many sectors (economical, financial etc), but also in the EU's foreign and security policy objectives. In practise, according to my opinion, the EU should comply with these purposes improving as first some structural reforms to better guarantee the functioning of the Powers (executive, legislative and judiciary) and in this way the rule of law, too.

To conclude we can say, as reported in a speech[8] of Mr Keynote that "*...the rule of law is part of the Europe's DNA, it's part of where we come from and where we need to go. It makes us what we are...*" or as the ex president of the EU Commission, J.M. Barroso said during a conference[9] "*...but the rule of law is not just an inspiration; it is also an aspiration – a principle that guides both our*

[8] Speech entitled *The European Union and the Rule of Law***,** at the Conference on the Rule of Law, Tilburg University, 31 August 2015, https://ec.europa.eu/commission/2014-2019/timmermans/announcements/european-union-and-rule-law-keynote-speech-conference-rule-law-tilburg-university-31-august-2015_en

[9] This speech was presented, the 28th of May 2013 during the meeting for the Inter-Regional Dialogue on Democracy, in Brussels. To view al the intervention: http://europa.eu/rapid/press-release_SPEECH-13-469_en.htm

internal and external actions.". With these two considerations we can easily affirm the importance of this principle in the European Union, as already also explained in a more detailed way above.

The weakness features of the EU's Rule of Law

By Alban Heron

Since the creation of the European Union and the rise of the rule of law, the Union had to face many difficulties to keep the foundation principles safe. And especially today, a lot of Member states initiatives or parties decisions, and so on, continue to pose problems.

- The rise of extremism and populism

A remarkable point which recently is affecting the State and it is in a continuing growth, it's the rise of extremism and populism all over the Europe.

First, we should define these terms. The populism looks more like a political attitude than a real ideology; in our societies it is showed by the rise of political party who are generally classified in the far right side of the political stage. Generally, these groups chose to not show to the society their extremist features with the goal to not scare the opinion of the electors. We can see that in almost all the States of the European Union, these kinds of parties appeared especially during the last years even if with different proportion among the States. The common ideas of this movement of populism are generally: to restore the democracy and create a real link between the citizens and the power in charge; they promise solutions for the common life's problem of everybody; they accuse the powers in charge to be corrupted, unable, and supporter of an elite who is not the real people of the State; they also idealise the nation and talk a lot about traditions which are lost for them and which should be rediscovered; and they are for the anti-globalization and anti-capitalistic models which according to them could be the cause of a lot of problems (generally the European nation and the borders who really criticized in this topic).
People who generally agree with these ideas are the ones who do not feel close to the political elite, the kinds of promises, listed above, encourage citizens to vote for them; it is more a fed up of everything than a real agreement and we saw that especially after the economic crisis of 2009.
Another problem of the populism is that really often, it is mixed with extremism. The extremism is a problem for the respect to the democracy and the fundamental rights. Extremists pronounce hateful speeches about some particular communities or minorities which are different for: the religion, the sexual orientation, the race etc. The xenophobia, in fact, is probably the most famous kind of extremist actually present in the European Region. The promotion of a "national identity" is highlighted and they accuse, as the populists, the globalization and integration process.

The problem for the rule of law in the European Union is that, this rise of extremism and populism generally follows some ideas against the political powers in charge in Europe. Always more frequently the question of the borders are asked but also others like the exit from the common market (the so called Euro zone) and sometimes even the exit from the European Union. With these nationalistic ideas about the come back to a culture and a tradition for each State, we should be scared about the rule of law in European Union; it could have less power, in the future especially if the Member State will refuse the decisions of the European Union's organisms. So there is actually an urgent need for the European Union to act together against this way of think to protect the values of the union. The situation is instable as said above, and to present another example from France, the Front National, the first political party in the European parliament is a far right party opposed to the European Union. For sure this party becomes powerful but also because the electors didn't go to vote, but this is another problem to solve, to re-establish the trust in the Institutions to the citizens.

- Some evidence in the Balkans of these problematic

One of the most important pillar of the European Union is the respect of the democracy; even if, on the paper, we cannot compare the European Union with other state entity, we can see that there are some limits to the democracy.

We can start by an example that in this year it has taken in consideration in many studies for quite obvious motivations: the Hungarian case.
The Hungary actually is ruled by the far right political party which is not the best friend of the European Union. A parliamentary resolution in 2012 put interrogations about the link between Hungary and State ruled by law, the rule of law taking less places than before. This resolution showed that the Prime Minister Viktor Orban reduced the powers of the contrary powers in 2011. Two years later, in 2013, the Hungarian parliament took a decision to put the legislative and executive powers above the judicial power, against the advice of the European Union and the Council of Europe. This decision put a question for the real independence of the justice in this State. We can also add the fact that the constitutional court is now really controlled, as the liberty of the medias almost does not exist anymore. One Hungarian scientist about this situation talked about "a democracy without any democrats" to resume the facts.

We can also notice than in Romania, the democratic contract does not exist in the Constitution. But here the situation is different, there is a far right political party in charge but a government of centre-left side. The first thing, that this government in charge did, since 2012, was to restrict the powers which belong to the judiciary, this restriction is clearly against the separation of powers, one

of the democracy's pillar. In Romania, there are not only extremist political parties which can be a danger for the democracy. In fact the government also: suspended the advocate of the people (mediator) who is a contrary-power; reduced the power of the constitutional court and replaced some important public agents. The previous government and President of the Republic had the idea to fight against the corruption, after the demission of the President and the change of government, this vision changed and in 2013 the Parliament took the decision to give less powers to the prosecutors; if they want to prosecute a member of the parliament, they now need the agreement of the same Parliament. And even if there are just 5 or 6 years that Romania entered in the European Union, the respect with the values of the rule of law changed and not in the sense of an improvement of it.

The last example that we decided to take into account briefly is about Bulgaria. The European Parliament in 2013 organised a meeting to talk about a reform of the Bulgarian Constitution, especially about the democracy after the attempt of assassinate of a political man who belongs to the Turkish minority. The crime in Bulgaria is really present and it is also a problem for the European Union.

From a French perspective, we could also observe how in France since 2011 there were excluded thousands of people who came especially from Romania and Bulgaria; these persons who did not work, didn't have a property an lived in a illegal way. The French law agree with this procedure and the European Union cannot do anything even if these people come from a State of the Union, and even if the status of Member allow the border's opening.

- <u>The critics against the democracy inside the Union</u>

The most critical reports about the European Union shows that not only some powers in charge in each State are attempting to the democracy but also the European Union itself. We can show some points where the European Union limits or even attempts the democracy.

First of all, for these theories the change of governance between representative government and supranational governance is an attempt because the role of the citizen is clearly limited. The citizen has not the power in the Union, like he could have in his State; the European electors, for the majority, don't know the European governance and this can be observed in the elections of the European parliament with an high level of abstention. The critics are also against the globalization, seen like a big market with at the head big companies which come from the private sphere and which would be the real leaders in the Union; they put the law in a side and enjoyed the rules like the freedom of circulation in a lot of different and various markets. In this system, the politic still

exists but it is only in the hands of these companies; politicians cannot do anything against that because of the economy based on this system.
Another critic underlines the fact that the links between Politics and law and more, between authority and power disappeared; the governments use the Europe Union as the perfect guilty if something fails. Also, the pyramid of law (which comes from Hans Kelsen) which is really important for the rule of law, actually is not really clear; in fact for each State it can be different. In definitive the European Union seems like a big bubble with a lot of troubles.

- The weakness of the Union through a limited use of capability

The European Union dispose of a lot of powers especially because the States let their own powers since the Maastricht Treaty (some aspects were already in common among the Member States, but it's with this Treaty that we posed the base for an Union). Unfortunately until now this power has not been used with all the capability in force in the EU.

First we can ask ourselves if the Union will fight especially for the protection of the democracy and the rule of law. If we think that: all the regulations, the personal pressures, the exclusions from Schengen, the different reports or even the threat of the use of the article 7 TEU, are not changing anything for those Governments in charge that are applying rules against the democracy or the rule of law in their States, what could be done more? Also, we see the drop of credibility of the European Union, in a recent survey, citizens in France (as a founder State of European Union) who have a positive image of the Union were not the majority, but only the 47% of the suffrages. People don't believe in the Union and they think that it is totally ineffective; the case of Great-Britain is good with people who do not seem belong to the Union but only to the States and with the economic problems the good points of the Union disappear one by one.
The wish of a strong Union pass by strong rulers who believe into the Union or in those who follow the principles of this; the problem is that there is not a pressure against the "bad students" of the Union like Hungary or Poland. The decisions of those States are also based on a dissatisfaction from the citizens to the decisions of the Union and this should be taken into consideration. The situation is quite bad in those States but if the Union does not do anything to help and fight against extremism it will probably become worst, why those States, which such ideas, should stop their actions without any pressures on them?

- A real primacy of the European rule of law in the Union?

To finish this chapter, we will talk about the different weaknesses of the European Union by a direct critic against the primacy of the rule of law in the European Union. This critic just says that this

primacy of the law is just an institutional ideal and in fact does not really exist. The rule of law which exists in fact, is here just to protect against the internal and external contestations. This interpretation is definitely not the first objective who appeared when the rule of law became the base in the European Union. With this denaturalization of the principle of legality, the Union has also an internal problem. Gianluigi Palombella in his vision said that the Union does not have strong bases for the law with only a logic of common market based by the Treaties. The principle is that in law, the Treaties should be stronger than the constitution of each States but in fact, only the States agree or not. to let powers to the Union; but if not the constitution keep the power and the Union cannot be anything against that, excepting to be inoffensive and weak.

French case study

Let's now show an interpretation of the rule of law of the European Union in a specific State. Our case is linked with one of the most important fight of the 21s century: the ecology.

We should start by the two parts of this Trial: the Court of Justice of the European Union and the French State. The court of justice of the European Union has as a first mission the control of the law in the European Union, the application on his territory. This court controls also the institutions of the Union and the respect of the obligations which come from the different laws (which come from the treaties, the directives etc...) of the Union. Another mission is that this court rules on some points after that national judges ask them to do it.

The second part of the trial is the French State, the France belongs to the European Union so the competence of the court is totally justified to state about French law which seems not in line with the law of the European Union.

Our case talks about the pollution of water by the nitrates in the agriculture. But the nitrates what is it? The nitrates are a chemical substance (like sodium, potassium etc...), we can evaluate the level of nitrates in the water and so it designs the level of pollution in this water.

In 1991, the European Union took a directive to fight against the pollution and especially the nitrates (the limit is about 50 grams per litre), if this limit is respected, the water is officially qualified as "potable" or drinkable. The ecology is a really important thematic for the European Union to protect the planet against the industry or our way of life who is killing our planet.

The Judicial Court of the European Union condemned Paris because of the non-ability of the city to control the pollution. The case condemned the State because of his problem of authority to respect the control of the pollution especially on the basins destined of the agriculture. For the court this problem is not only about Paris but about 55% of the territory destined for the agriculture.

In France since the *case confédération nationale des sociétés de protection des animaux de France et des pays d'expression française* in 1984 and since the case *SA Rothman international France et SA Philippe Morris* in 1992, the European directives are stronger than the French regulations and laws. Another important case for our case is *loi sur l'économie numérique* in 2004, it put the obligation of transposition of the European directives in France by the State is the directive is enough clear and not contrary to the constitution. Our case ruled by a previous directive and who do not seem contrary to the French constitution seems assemble all the competences of the court of justice of the European court so the formal competence looks legitimate.

The non-respect of the transposition of the directive from 1991 will let plane a condemnation of the French State around some tens of millions Euros. The government who was in charge before 2012 tried to hide it and took the water from some places without a big pollution but the rivers near some places had still a lot of pollution. In February 2012, the court came back to alert the French State but the new government promised to the court of justice to join to the directive. But this speech was not enough, the State was condemned in 2013 and that is not all because the court of justice came back the next year in 2014. This time it is against the French regulations which seem too much lax, letting the pollution continue to exist and growing up. Because of this pollution, the France closed a lot of points of water especially in Britain because of the number of the bad herbs called green seaweed which is dangerous for the health of the drinkable water.

The court of justice can condemned the French State for a penalty of some tens of millions of Euros and also a daily penalty to force the State to take some fast measures. Since 2014, nothing happened from Brussels, no condemnations were pronounced against the State. We have two possibilities: the first one is that the State applied to the directive and decided to finally respect it with the pressure of the court of justice and some ecological association like *association eau et rivières de Bretagne*. The second one is linked with the weaknesses of the Union, we can imagine that they put a pressure but they were too scared or too weak to do anything to protect against the pollution in France or maybe that an internal agreement was passed between the Union and the French State who promised to do it but taking time.

For now, no answers were gave but maybe that during the next months we will have some news about this story after one year and a half of silence and know if everything is now in order or in contrary if a real condemnation will be posed against the French State in case of non-respect of the European laws.

The steps towards and improvement of the rule of law in Europe

By Alessia Azzini

After to have underlined some dimensions and specific cases in which Europe has suffered and it is still affected with, it's important to present how the EU Commission is moving and moved in order to enrich and to solve these instabilities. Successively to the recall of the ex President Barroso to not take for granted the fundamentals values of the European Union, observing the crisis events happened in many State members, and after the EU institutions and governments' requests for an intervention of the Commission, as Guardian of the Treaties; the Commission answered with the formulation of a new EU framework to strengthen the threatened rule of law because the previous existing instruments showed to not be adequate to protect the principle of the rule of law (in fact the Article 7 TEU sets up a mechanism to guarantee the protection of EU core values, with an early warning system in case of a risk of breaches, and a sanctions mechanism in the event of a serious and persistent breach by a Member State. Regrettably, it has never been activated and therefore its objectives are far from being achieved. The main issue lies with the highly political character of this procedure and the fact that it does not intend any legal or judicial intervention. The main decisions for applying Article 7 TEU are vested in the Council and the European Council, composed by the Member Countries, which are reluctant to sanction another Member because this may be turned against them).

This new European framework has the goal to find a solution through the dialogue, it's a preliminary stage to the use of the Article 7 TEU and it's based on 3 different pivotal elements. These points are: first, a thorough assessment of the situation by the Commission; then an equal treatment of every Member State and final a rapid and concrete action to solve the threat and to avoid the use of art. 7 TEU. Furthermore, the Framework has set up a three stages process:

a. *Commission Assessment*: the Commission will gather and evaluate all the relevant informations and assess if there are some systemic threats to the rule of law. In case of threats, it will start a dialogue with the Member State in which the Commission will expose its worries privately, with the confidence to receive an answer.
b. *Commission Recommendation*: in a second stage, whether the quarrel has not been solved yet, the Commission will send a "rule of law recommendation" addressed to the Member State, which should provide to remedy the problems identified within a fixed time limit and with the duty to inform the Commission about the steps taken to that effect. In this passage the Commission will make public its recommendation.

c. *Follow-up to the Commission Recommendation*: in the last stage, the Commission will monitor the resources and documentations given by the Member State to the recommendation and if there is no admissible follow-up in the time limit decided, the Commission can provide to start one of the mechanisms set out in Article 7 TEU.

The relations with the other EU institutions: the Parliament and the Council will remain active during all the dialogue between the Commission and the Country Member, even more the Commission, especially during the first stage, can request an external consultation to: the European Agency for fundamental rights, the EU juridical networks, the Councils of State or the Supreme administrative jurisdictions, to the Council of Europe or the Venice Commission etc in order to better analysed, resolve, and establish the best solution for maintain and if it is possible to move some steps towards an enrichment of the foundational principle of the EU rule of law.

This is just a little solution; this process is far from being completed and it's important that States would have the energy to drive the Union forward, despite of the difficulties. First it should be important to give to European citizens and national authorities the capability to trust in a legal systems different from their one. A trust, which should be conquered with the effectiveness and the use of the tools that are already present in the EU. If the rule of law will be preserved, observed completely and enriched in all the Member States, and if the Union will be able to show its efforts to its citizens probably they will trust again in it, as it was in past.
Other possibilities for the future, as illustrated by the EU vice president, Viviane Reding, during the presentation of this new method in front of the General Affair Council, it could be a change of the Treaties in the order to a broader reflection on the future of Europe, starting from a more strong bond in the political sphere, for example, because it's important to not forget that Europe is not only an internal market or an economic and monetary union, but also it offers to its citizens a European common area of freedom, security and justice. These are the core values European States have to enforce.

Italian case study

The main argument of the case Cestaro v. Italy could not seem directly connected with the topic of this essay because it regards the conviction of torture committed by the Italian policy during the Genoa G8 against pacific protesters. On the contrary, according to what I have affirmed until now and to what I have found in many speeches, a further step to a strengthening of the bond among European Member States and the safeguard of those foundational principles (such as democracy, human rights, rule of law etc.) it could be represented by the EU accession to the *European Convention on Human Rights*. The pillars of the European Union are in a certain meaning

complementary, interconnected and if just one suffers a threat all the EU system is threatened to its base, for this reason it should be important to unify the legislation in the matter of Fundamental Rights.

In the sentence Cestaro v. Italy, it's relevant to notice as one of the founding Member of the European Union, Italy, among its problems and deficits, has an important lack in the penal law, impeding the access to a process for torture to its citizens in front of the National Courts. Italy in 1984 signed the U.N. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and it ratified it in 1989, but after almost 30 years, after to have accepted the EU Charter, in the Italian penal law still is absent a statement against the misdemeanour of torture.

On the 7 April 2015 the European Court of Human Rights (ECHR) issued its judgment against Italy. The case concerned a man, Mr Cestaro who was among the protesters surrounding the G-8 summit in Genoa (Italy) from the 21st to 22nd July 2001. On the first day of the summit more than 100,000 protesters demonstrated against the globalization; unfortunately in the throng there were not only peaceful persons but also radical groups which increased the tensions in the city, using batons and other weapons. The situation was so difficult, instable and risky for people and police that a young man died. The protesters were be housed, in some schools, which were been stormed by Italian's police at that time. During the night, with the aim to find the violent protesters the Police irrupted in the school Diaz - Pertini and, at the contrary of what it was expected, it started to be really violent, beating the protesters. Mr Cestaro was subjected to repeated kicks and beatings with the baton (this tool is considered a potential lethal weapon), and the results were multiple fractures and a permanent impediment in his right arm and leg. After these incidents, many persons denounced the happenings in front of the National Courts, but despite all the efforts of the judges only few agents were convicted with inferior punishments such as calumny, abuse of public authority and grievous bodily harm.

Following the National Court decision Mr Cestaro decided to address the ECHR. The Court strongly criticised: the conduct of the police (so implicitly the Italian government), who had not cooperated adequately and had *de facto* impeded the identification and punishment of the police officers who had perpetrated violence against Mr. Cestaro; and even more, as affirmed at the beginning of this paragraph, the ECHR convicted the lack of adequate criminal legislation concerning the punishment of torture and the application of the statute of limitations to the crimes, which it has impeded to the National Court to punish the violent officers, ensuring their impunity.

After 14 years the ECHR ruled the Cestaro case as a "dual" violation of the Article 3 in nature: on "substantive" grounds owing to the ill-treatment of the applicant and on "procedural" grounds

owing to the lack of adequate investigations and punishment for the officers who were responsible for the acts of torture.

Italy has not provided yet to solve this big problem in its penal statement, showing, in my opinion, as it could be always more important a step for an unification of the judiciary power, and not only an economical integration, passing the criterion of "mutual trust" between the Member State, and allowing a reciprocal control among them for the respect and the compliance, not only of the Human Rights, but also of the other foundational principle, in particular the rule of law.

Conclusions

Looking at our different research on this general topic which is the rule of law, our studies have tried to remark the complexity of the rule of law with the aim to find a meaning.

Existing since many centuries in different forms, the Rule of law developed during the years reinforcing the original values and integrating these with new traits. What still it's complex probably, it's the research of a definition in the European Union; a rule of law which should have in common all the different visions of the meaning of the rule of law, deriving from the many cultures in our societies. According to an Erasmus students perspective this dimension of divergences in the meaning of Rule f Law should not be understood only as source of problems, but as a point from which start to build a better Union. The European Union has many cultural and social identities and of course it's impossible to project to structure a supranational power, different from a State, starting from the divergences, in fact the Foundational fathers of our Union started from the most basic resource they had in common: coal and steel; then they decided to put in common the agriculture, to allow the exchange of students among the States, to open their borders to the citizens of Europe, to establish a common market and a common value etc. until the effective construction of an Union.

In our opinion we have to start again from what, as European, we have in common; the rule of law in this sense is the base of the structure of the new Europe. As observed in the chapter related to the origins of the rule of law, this notion has its roots in the father's of the European thought; the formal and substantive elements listed above are common in all the Member State. The threats which are affecting our national orders, such as the populism and the extremism, are always been present in Europe, we haven't to forget this, as we don't have to erase the fact that we have been able to outdo ourselves becoming an example of stability for the whole world. This doesn't mean that we have to underestimate the risks neither to take for granted our core values, but simply we have to stress out our capability to resistance and move forward, in our opinion to a Federation. Gradually exactly how it happened for the European Union, enlarging the number of topic to share: like defence,

energy, environment, law with the goal to improve the enhanced cooperation even whether maintaining the opt-outs in order to create a bond among the States.
Also the "mutual trust" should be revised in order to a develop of effectiveness in the Union and many other aspects that it could be too long to present here.
We have decided to present, without the presumption to be experts in the topic, our vision of the rule of law. For us, as Barroso said, the rule of law is "*an inspiration and an aspiration*"; it's from where our society derive and where our efforts have to be directed, in the sense of a constant develop of the idea, and an improvement of all those fundamental aspects of the modern society: such as rights, freedoms, democracy.

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