

THE RULE OF LAW PRINCIPLE IN THE EU

Sabina Filofie

IIIrd year, UBB Law School

Summary

The rule of law principle serves as a fundamental aspect of democratic governance which guarantees equity, consistency and responsibility within democratic societies. Within the European Union (EU), the rule of law is not only a fundamental value but also a legal requirement enshrined in the treaties that govern its functioning. This essay explores the significance of the rule of law in the EU context, tracing its historical development, analysing its key components, and examining the challenges it faces. Through a review of recent controversies and EU mechanisms for safeguarding the rule of law, this essay highlights the complex interplay between legal norms, political dynamics and institutional structures within the EU. By assessing the effectiveness of EU responses to rule of law challenges and reflecting on future prospects, this essay contributes to a deeper understanding of the rule of law's role in shaping the EU's legal and political landscape.

I. What is the Rule of Law?

The Rule of Law is one of the most important principles the European Union was founded on. According to the European Parliament's Decision **Doc. 11343**¹ from 6 July 2007, the Rule of Law states that Law should be the source of power within the states and that the Law is the only one which can limit this power. In this respect, the principle imposes that a right of reviewing the decisions of authorities by an independent judiciary should be granted to the citizens of all member states. According to the European Council², The Rule of Law requires that the process of law-making should be democratic, accountable, transparent and pluralistic and that the laws should be clear and accessible to every member of the European society.

¹ Doc. 11343 - Report of Committee on Legal Affairs and Human Rights.
Available at: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11593>.

² <https://www.consilium.europa.eu/en/policies/rule-of-law/#what>.

To be able to fairly understand the true meaning of the Rule of Law, we have to visualise it in harmony with two other fundamental principles of the EU, namely, democracy and the principle of respecting human rights. These two values play a very important role in defining the Rule of Law which would lack substance in the absence of the two principles. This is because, in a very simplistic phrase, the Rule of Law means that states should be governed by the law. Therefore, if democracy and Human Rights, as well as other important principles of the EU, wouldn't collaborate with the Rule of Law, the Law could be very arbitrary, immoral and unethical. This would transform the Rule of Law into the perfect weapon of a totalitarian state which is the exact opposite of everything the EU is pursuing to be.

The Rule of Law is responsible for attaining many objectives that are emblematic for the EU credenda such as freedom, security, democracy, social and economic growth and many other values that ground the EU doctrine. Therefore, consolidating the presence and application of the Rule of Law in internal decisions of member states in its true and fair meaning and purpose will create a steady and beneficial foundation for developing a society where citizens are protected from arbitrariness, inequity and injustice.

II. History of the Rule of Law

The Rule of Law has come a long way since it was first invented by the Ancient Greeks³. In the beginning, the principle existed in a very simple form that didn't include all the elements that compose the Rule of Law today. The Greeks believed in democracy, but in a more direct one where the heads of the families were collectively deciding for the community. This form of applying the principle is similar to the pluralism of today's form of the principle. Although the concept was similar, the instruments weren't. At that time the plurality meant only the heads of the families in the community. There weren't any institutions, courts or entities that were chosen by the people for this purpose. Also, the concept of equality existed only between men of similar social status, limiting the existence and development of the principle at that time.

The Romans also adopted a similar form of the Greek Rule of Law with a few particularities. The evolution of rule of law marks a transformative journey from late Roman concepts of royal supremacy to modern constitutional accountability. This fundamental shift

³ Russell Fowler - *The Rule of Law: Origins, Meaning and Endangerment* in Tennessee Bar Association Journal, Vol. 59, No. 3. Available at: <https://www.tba.org/?pg=Articles&blAction=showEntry&blogEntry=90749>.

was initiated by the Magna Carta of 1215, establishing that monarchical power was subject to legal constraints and introducing essential elements of procedural justice, including requirements for witness testimony, peer judgment, and protection against arbitrary imprisonment. The constitutional progression continued through the Petition of Rights 1628 and was strengthened by the formalization of habeas corpus in the 1679 Act. The Bill of Rights 1689 completed this foundational framework by institutionalizing parliamentary supremacy in lawmaking and establishing the Crown's subjection to legal action. While the precise scope of rule of law remained somewhat fluid during this period, these sequential constitutional developments established the core principles that would shape modern constitutional democracy.

The great Roman philosopher *Marcus Tullius Cicero* once declared: 'It is the law that rules ... not the individual who happens to be the magistrate.'⁴ This was the starting point for what we know today as the Rule of Law.

Over the centuries, the Rule of Law evolved into a set of other principles such as supremacy of the law, equality of all citizens before the law, independence of judiciary institutions, clarity and accessibility of the laws and many other rules of this kind.

III. Rule of Law in EU treaties and case law

Not only the Rule of Law is a fundamental principle of the EU, but it is the most popular one judging by its presence in many political and judicial discourses⁵. Therefore, naturally, it is present amongst numerous treaties and court decisions. The Rule of Law is mentioned in two of the most important EU acts: The Treaty on European Union⁶ and The EU Charter of Fundamental Rights. In Article 2, TUE establishes the Rule of Law as one of the fundamental values on which the EU bases its purposes and principles, whilst in Article 7 it provides the manner in which the violation of any of the values mentioned in Article 2 should be punished.

⁴ Ibidem.

⁵ Brian Z. Tamanaha - *The History And Elements Of The Rule Of Law*, Singapore Journal of Legal Studies National University of Singapore.

⁶ *The treaty on european union*. Available at:
https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

The EU Charter of Fundamental Rights⁷ also institutes in its Preamble the Rule of Law principle as one of the fundamental values of the EU.

The jurisprudence of the Court of Justice has established the critical importance of the rule of law through landmark decisions that emphasize its foundational nature in the European legal order⁸. Beginning with the *Les Verts*⁹ case, the Court established the fundamental principle that all measures must conform with the basic constitutional charter. Through multiple decisions over time, the Court has consistently demonstrated that Member States and EU institutions must adhere to rule of law principles not only in theory but in practice. The Court's approach has evolved from focusing on individual compliance issues to addressing broader systemic challenges to the rule of law. Rather than treating these principles as mere abstract values, the Court's decisions have transformed them into concrete, enforceable obligations essential for the functioning of both the internal market and the area of freedom, security and justice. This case law development reflects the Court's understanding that effective legal protection and judicial independence are not optional features but fundamental requirements for the European Union's legal architecture.

Case C-216/21, Romanian Judges' Forum Association v. Superior Council of Magistracy¹⁰

In 2019, Romania's Superior Council of Magistracy approved new regulations modifying the promotion procedure for lower court judges. The new framework replaced the previous merit-based written examination system with a subjective evaluation of candidates' activity and conduct over the previous three years. This assessment was to be conducted by a commission comprising the president and members of the appellate court where positions were to be filled - the same judges who reviewed appeals against candidates' decisions and conducted their periodic evaluations post-promotion. The Romanian Judges' Forum Association

⁷ Charter of fundamental rights of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT>.

⁸ <https://ceridap.eu/current-challenges-for-the-rule-of-law-and-the-role-of-the-judiciary-in-europe/?lng=en#post-5241-footnote-1>.

⁹ Case 294/83 “*Les Verts*”, ECLI:EU:C:1986:166. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61983CJ0294>.

¹⁰ ECJ Decision from September 7 2023, in Case C-216/21, *Romanian Judges' Forum Association v. Superior Council of Magistracy*, ECLI:EU:C:2023:628. Available at: https://curia.europa.eu/juris/document/document_print.jsf?mode=lst&pageIndex=0&docid=277061&part=1&doclang=RO&text=&dir=&occ=first&cid=10359966.

challenged these regulations, arguing that such a procedure could engender hierarchical subordination attitudes and encourage compliant behavior from judges seeking promotion.

The Court established several crucial principles regarding judicial independence and the rule of law. First, it affirmed that judicial independence guarantees must extend throughout judges' careers, including promotion procedures. The Court developed a comprehensive framework for evaluating the compatibility of promotion systems with judicial independence, requiring that substantive conditions and procedural modalities must not generate legitimate doubts regarding judges' impermeability to external factors or their neutrality. While acknowledging that concentration of power in appellate court leadership is not *per se* incompatible with judicial independence, the Court emphasized the need for objective, verifiable evaluation criteria, robust procedural safeguards including reasoned decisions and appeal rights, and demonstrable independence of the evaluation commission itself. This decision is particularly significant for rule of law jurisprudence as it establishes concrete parameters for assessing institutional arrangements affecting judicial careers, emphasizing that structural guarantees of judicial independence must permeate all aspects of judicial professional development, not merely initial appointment procedures.

Associação Sindical dos Juízes Portugueses v. Tribunal de Contas¹¹

The Court of Justice of the European Union issued this preliminary ruling in response to a request from the Supreme Administrative Court of Portugal. The case concerned the temporary reduction of remuneration for members of the Portuguese Court of Auditors as part of budgetary austerity measures. The Court emphasized that the EU is a union based on the rule of law, which requires Member States to ensure effective judicial protection in areas governed by EU law. Article 19(1) TEU entrusts national courts with this task, underscoring the importance of judicial independence.

The Court explained that judicial independence is essential for the proper functioning of the EU's judicial system, as it allows courts to exercise their functions autonomously, free from external influence. This independence is a necessary condition for the preliminary ruling mechanism under Article 267 TFEU to operate effectively. The Court concluded that the

¹¹ ECJ Decision from February 27 2018 in Case C-64/16 - *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, ECLI:EU:C:2018:117. Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62016CJ0064>.

temporary remuneration reductions applied to the Court of Auditors did not undermine its independence, as the measures were general in nature and limited in duration.

This ruling highlights the central role of the rule of law principle within the EU legal order. Judicial independence emerges as a key element of the rule of law, as it guarantees the effective judicial protection of rights conferred by EU law. The Court's emphasis on this principle demonstrates its commitment to upholding the integrity of the EU's system of legal remedies, which is vital for maintaining mutual trust between Member States and the proper functioning of the entire EU legal framework.

Joined Cases C-558/18 and C-563/18 Miasto Łowicz v. Skarb Państwa – Wojewoda Łódzki and Prokurator Generalny v. VX, WW, XV¹²

This ruling by the Court of Justice of the European Union significantly developed the interpretation of the rule of law principle within the EU. The Court emphasized that the rule of law is a fundamental value of the EU, and that member states must ensure effective judicial protection in areas governed by EU law. Judicial independence is essential for the proper functioning of the EU's judicial system, as it allows national courts to exercise their functions autonomously without external influence. The Court's decision establishes a direct link between the rule of law and the concrete requirements for judicial independence, underscoring that respect for the rule of law is an obligation for all member states.

IV. Challenges regarding the Rule of Law principle

One of the biggest challenges that the Rule of Law faces derives from the paradox that this principle represents. Thinking about the meaning and purpose of law as well as the meaning of the principle, we realise that it is very easy to fall into a trap. The Rule of Law means limiting the power the people have upon one another to ensure freedom and equality between humans. But, if we dive too deep into this reasoning, we might find ourselves in a place where we follow rules that have nothing to do with the society we actually live in, which would lead to exactly what the Rule of Law is aiming to avoid: arbitrariness, corruption and lack of morality.

¹² ECJ Decision from March 26 2020 in Joined Cases C-558/18 and C-563/18, *Miasto Łowicz v. Skarb Państwa – Wojewoda Łódzki and Prokurator Generalny v. VX, WW, XV*, ECLI:EU:C:2020:234. Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62018CJ0558>.

Although it might seem like an extreme hypothesis, it wouldn't be impossible to fall into such a trap. In today's legal and political systems, there are many procedures and rules that must be followed. If we go step by step, from a procedure to another, it is very likely for us to only see the letter of the law and forget about its spirit, which is the one we should actually look for when applying the law.

On a more concrete note, amongst many other things, the Rule of Law includes the independence of judiciary institutions. This principle appeared in order to ensure freedom and security, making space for judiciary institutions to apply the law in the most accurate way for each concrete case. Given the fact that the law will never be able to predict every possible situation that might occur, it is the judiciary institutions' responsibility to adapt the law to the case. But our human nature is not always fair and some might take advantage of this independence to claim personal benefits or seek revenge¹³. Therefore, whilst being absolutely necessary to allow this independence, we have to be careful in whose hands this power is placed.

V. Safeguarding the Rule of Law in EU

The Rule of Law is a key principle of the EU's dynamic that dictates the direction in which it goes. Therefore, the EU laws and practices must provide efficient tools that can ensure the respect of the principle as well as suitable sanctions for member states that do not comply with the Rule of Law principle. As we've already seen its challenges, we now have to see the remedies that can ensure the Rule of Law is applied as it was firstly meant to.

The best-known tool of all is Article 7 of the TEU which provides the procedure that should be followed in the occurrence of a state's violation of the values referred to in Article 2, including the Rule of Law. Article 7 states that on the proposal of either a third of the member states or the European Commission with the approval of the European Parliament, the state suspected of the violation of Article 2 should be heard by the European Council which will determine if there is indeed a serious risk of breach of Article 2. If the Council decides with a qualified majority (four fifths) the existence of a violation of the fundamental values, it will make recommendations and can even restrain some of the state's union rights. However, the

¹³Naomi Choi, *Challenges to the rule of law*, Encyclopaedia Britannica.
Available at: <https://www.britannica.com/topic/rule-of-law/Challenges-to-the-rule-of-law>.

state in question will still be bound by its member state obligations. The restrictions may be revoked by the Council if the situation of the state improves.

Another tool that was shaped specifically for safeguarding the Rule of Law principle is the Annual Rule of Law Dialogue¹⁴. This is a mechanism that brings together, every year, the European Council, the European Parliament, the European Commission, representatives of all member states, national parliaments and other interested parties to discuss matters in regard to the Rule of Law for the purpose of preventing violations, improving the functionality of the governing systems as well as encouraging cooperation between institutions. Since 2020¹⁵, the dialogue has a more structured course, being held on national as well as on union level. The Commission's report¹⁶ holds a record of these discussions, focusing on four major areas: *justice systems, the anti-corruption framework, media pluralism and media freedom and other institutional issues linked to checks and balances*. Since 2022, the Commission also makes recommendations for each state. In December 2023, the Presidency made an evaluation of the procedure concluding that it is beneficial and useful for improving the functionality of the EU and that the Dialogue will continue to be held annually until a new evaluation will take place in 2027.

VI. Personal opinion on the topic

The Rule of Law's significance as a cornerstone principle of the European Union is incontestable, serving as the foundation upon which the entire European legal doctrine is built. However, its practical application presents a fascinating dichotomy: while it must align with moral standards and common sense, it simultaneously needs to balance societal welfare with individual justice. This delicate equilibrium is particularly challenging in contemporary society, where collective needs often clash with individual rights, requiring a nuanced interpretation that goes beyond mere legal technicalities.

Among the subsidiary principles of the Rule of Law, I think judicial independence emerges as arguably the most critical and demanding element. The human factor in judicial

¹⁴ <https://www.consilium.europa.eu/ro/policies/rule-of-law/#toolbox>.

¹⁵ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle_ro.

¹⁶ EVALUATION OF THE ANNUAL RULE OF LAW DIALOGUE, Brussels, 12 December 2023. Available at: <https://data.consilium.europa.eu/doc/document/ST-16547-2023-INIT/en/pdf>.

decision-making presents an inherent challenge - no matter how well-trained or experienced, judges face situations where absolute objectivity is unattainable, and legislation may not fully address the complexity of the case at hand. However, when judges operate within a robust framework of principles, supported by a coherent legal context at both national and Union levels, they become effective guardians of justice. This judicial effectiveness creates a positive societal cycle: as citizens witness their rights being protected, their trust in the system grows, fostering greater civic engagement and societal development.

The paradoxical nature of the Rule of Law principle presents perhaps its greatest threat. History teaches us that seemingly benevolent legal frameworks can be manipulated to achieve oppressive ends. A prime example is the rise of Nazi Germany, where Hitler's ascent to power uniquely occurred through democratic means. His initial platform emphasized national unity, economic recovery, and traditional values - principles that resonated deeply with the German populace. However, once in power, these same principles were distorted to justify authoritarian control and systematic oppression

Therefore, the true essence of the Rule of Law lies not merely in its literal application but in its spirit. While technical compliance with legal provisions might satisfy formal requirements, bad-faith application can severely undermine justice. The principle demands more than just rule-following; it requires a mindset grounded in morality and equity. This aspect becomes particularly crucial given humanity's natural tendency toward self-interest and individualism. Therefore, as I see it, The Rule of Law serves as more than a legal framework - it represents a moral compass that guides societal development while safeguarding individual rights.

CONCLUSIONS

The Rule of Law principle stands as a cornerstone of the European Union's constitutional architecture, representing more than a mere legal concept - it embodies the fundamental values that shape the Union's identity and operational framework. Through extensive analysis of its historical evolution, from ancient Greek democracy to modern constitutional frameworks, it becomes evident that this principle has transformed from a rudimentary concept of legal supremacy into a sophisticated mechanism of democratic governance.

The principle's contemporary manifestation in the EU context demonstrates remarkable complexity, integrating various components including judicial independence, legal certainty, and institutional accountability. The EU's legal framework, particularly through Article 2 and Article 7 TEU, as well as the EU Charter of Fundamental Rights, establishes robust mechanisms for safeguarding this principle. The jurisprudence presented, along with the broader body of case law in this domain, illustrates the principle's practical significance in shaping institutional relationships and protecting fundamental rights within the Union.

The Annual Rule of Law Dialogue, introduced as a preventive mechanism, represents a significant advancement in the EU's approach to maintaining rule of law standards. This structured dialogue, focusing on justice systems, anti-corruption frameworks, media pluralism, and institutional checks and balances, demonstrates the EU's commitment to proactive engagement with rule of law challenges. The positive evaluation of this mechanism in December 2023 confirms its effectiveness in promoting institutional cooperation and preventing violations.

However, the principle faces inherent paradoxes and practical challenges. The delicate balance between procedural adherence and substantive justice, coupled with the necessity of maintaining judicial independence while preventing its abuse, presents ongoing challenges that require constant vigilance and adaptation of existing safeguards.

In conclusion, the Rule of Law principle emerges not only as a foundational pillar of the European Union but as a living instrument that continues to evolve in response to contemporary challenges. Its effectiveness in protecting democratic values while promoting social and economic development underscores its indispensable role in European integration. As we look toward the future, the principle's continued evolution and strengthening will remain crucial in safeguarding the values that define the European project, serving as a beacon of hope for those who believe in the power of law to protect human dignity and promote societal progress.

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