

THE EFFECTIVE APPLICATION OF THE RULE OF LAW BY THE MEMBER STATES OF THE EUROPEAN UNION

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Abstract

The paper aims to explain, in the first part, the concept of the rule of law, as it is determined at the level of the European Union. From its creation until today, the principle of the rule of law has experienced a spectacular evolution and a very widespread in democratic states.

The second part the paper emphasizes some support mechanisms of the rule of law in the European Union while the last one refers to the analysis of how the member states of the European Union have effectively implemented the analyzed principle. In this sense, in our exposition, important decisions are analyzed, pronounced by the General Court and the Court of Justice of the European Union, with reference to the principles of legality and legal certainty, as well as the effective judicial protection. It was found that, although the rule of law is one of the essential values of the Union, which was constantly promoted by the Union bodies, it was repeatedly violated by the Member States; some of them even had vehement reactions related to the constraints endured in this regard.

The article is of real interest both for specialists in the field and, above all, for the Member States of the Union, which have the obligation to comply with the existing legal provisions of the European Union and the specific jurisprudence on the matter.

Keywords: *rule of law; application; European Union member states.*

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1. GENERAL CONSIDERATINS ON THE RULE OF LAW

The expression *rule of law*, created by German jurists in the 19th century and originally directly related to the state, has been explained as meaning a state subject to the law or legal order existing at a given time. Currently, *the rule of law* is considered a fundamental principle both in the legal order of states and in that of international organizations, which have, among their objectives, the defense of democratic values, in general, and the protection of the rule of law, in particular (Stiegel and De Schamp, 2023).

The concept of *the rule of law* was and is, permanently, also in the attention of specialists in the field, because it has a complex content, in a continuous transformation, which involves numerous demands, developed, extensively, in

multiple works and international conferences organized on this topic. This principle (which is related to all areas of development in a society or community) aims, *inter alia*: the placing laws at the top of the hierarchy of the sources of law; the concrete application of the principle of the separation of powers in the state, respecting all its requirements (the existence of different functions, exercised by distinct authorities within a state; the control, as well as the collaboration of the state bodies that exercise these functions); the enshrining and the guaranteeing the fundamental rights of citizens; the effective judicial protection; the media independence; the compliance with the principles of legality and legal security; in general terms, the promoting all democratic values.

Of a real use in explaining the analyzed principle is the document adopted by the “Venice Commission” (European Commission, 2016) within the Council of Europe, which offers a series of essential benchmarks in defining the term subject to examination (marks whose scope is detailed through many other concepts): *legality* (supremacy of the law, compliance with the law, relationship between international law and domestic law, law-making powers of the executive, law-making procedures, exceptions in emergency situations, duty to implement the law, private actors in charge of public tasks); *legal certainty* (accessibility of legislation, accessibility of court decisions, foreseeability of the laws, stability and consistency of law, the principle of legitimate expectations, non-retroactivity, *nullum crimen sine lege and nulla poena sine lege* principles, the *ne bis in idem* principle); *prevention of abuse or misuse of powers*; *equality before the law and non-discrimination* (equality in law, equality before the law, non-discrimination); *access to justice* (independence and impartiality, fair trial, constitutional justice, if applicable); *examples of particular challenges to the rule of law* (corruption and conflict interest, collection of data and surveillance). The standards relating to the benchmarks are also determined in the aforementioned legal act.

2. SUPPORT MECHANISMS OF THE RULE OF LAW IN THE EUROPEAN UNION

The rule of law is referred to in the preamble of the Treaty on European Union (European Union, 2016): states confirm “their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of *the rule of law*”.

The rule of law is also mentioned in the preamble of the Fundamental Charter of Human Rights (European Union, 2012, pp. 391–407): “conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and *the rule of law*”.

Article 2 on the Treaty on European Union (TEU) enshrines the values, which are the basis of this regional organization, including the rule of law: “the

Union is founded on the values of respect for human dignity, freedom, democracy, equality, *the rule of law* and respect for human rights, including the rights of persons belonging to minorities”. The consequence of violating these values is the initiation of the procedure provided for in the article 7 of the treaty. Thus, “the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in the article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply. In the next phase, the European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in the article 2, after inviting the Member State in question to submit its observations. In another stage that follows in this procedure, after such a determination has been made, the Council, acting by a qualified majority, may decide to suspend some of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall consider the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken in response to changes in the situation which led to their being imposed”.

Because it was considered that the procedure mentioned above is not sufficient, in 2020, the Council and the European Parliament have adopted the Rule of Law Conditionality Regulation. This normative act was contested by Hungary and Poland, before the Court of Justice of the European Union or CJEU, which ruled two relevant decisions in this sense (CJEU, 2022a and 2022b).

According to the article 19 of the Treaty on the European Union (TEU), Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. The expression *effective legal protection* also includes the obligation for Member States to ensure *effective judicial protection*, an essential requirement for respecting the rule of law. In the same vein, TEU enshrines the rule of law as an essential condition for the accession of a state to the European Union (article 49).

The principles of the EU Treaty regarding the external action of the Union are stated by the Article 21: “1.The Union's action on the international scene shall be guided by the principles which have inspired its own creation,

development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. 2. The Union shall define and pursue common policies and actions and shall work for a high degree of cooperation in all fields of international relations, in order to: [...] consolidate and support democracy, *the rule of law*, human rights and the principles of international law. According to art. 23 TEU, the Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1, that is, the provisions of the Article 21.

Starting from 2003, the examined principle was constantly under the attention of the European Commission, the Council and the European Parliament, which developed a series of important documents on the matter, which were analyzed extensively in another exposition. Based on the normative act issued in 2019 by the Union Executive (European Commission, 2019a), entitled *Strengthening the rule of law within the Union. A blueprint for action*, the latter has drawn up, starting in 2020, a report on compliance with the rule of law. The latter is one of the most important ways to uphold the rule of law.

In 2019, the European Commission, Directorate-General for Justice and Consumers requested a survey on the rule of law (European Commission, 2019b). This Eurobarometer survey shows the importance and urgent need to improve the content of the concept of the rule of law, which includes 17 principles, grouped into three important areas: *legality, legal certainty, equality before the law and separation of powers* (equality before the law; clarity and stability of the law; ease in following how parliament adopts laws; lawmakers act in the public interest; independent control on laws); *prohibition of arbitrariness and penalties for corruption* (clarity of public authorities' decisions; independent review of public authorities' decisions; unbiased decisions; making decisions in the public interest; acting on corruption; codes of ethics for politicians); *effective judicial protection by independent courts* (access to an independent court; length or cost of court proceedings; the independence of judges; the proper investigation of crimes; respect for and application of court rulings; codes of conduct for politicians). This document emphasizes the importance of the media and citizens in defending the principle under consideration. Most respondents involved in the above survey (27655 respondents) considered that: the requirements of the rule of law are essential or important; their compliance must be improved in the member states of the European Union; there is a need to better inform citizens about the essential values of the Union.

The Rule of law Report 2023 (European Commission, 2023a) makes an analysis of four pillars: national justice systems, anti-corruption frameworks, media pluralism and other institutional checks-and balances. The report mentioned above contains a general report on the rule of law in the EU, as well as separate chapters, which include detailed analyzes in the field related to each Member State. An evaluation of the recommendations from previous years' reports is also included in the report, around 65% of them being respected. It should be noted that, from 2023, the report also contains specific recommendations, which are addressed to the concerned states. Many of these have carried out multiple reforms in the field of justice related to important matters regarding the appointment and dismissal of judges or the legal status of the Councils for the Judiciary, which must benefit from the necessary resources to be effective and able to manage their budget independently. It is also emphasized that extremely long court proceedings and long delays negatively affect citizens' and businesses' trust in the national judicial systems.

The report indicates that a large part of Europeans is very skeptical of the measures promoted by states against corruption and believe that high-level corruption cases are not sufficiently prosecuted. Several Member States have promoted criminal law reforms to strengthen the fight against corruption, while others have experienced stagnation in this area. This year's recommendations aim to strengthening preventive frameworks, such as those governing lobbying and conflict of interest rules, as well as ensuring the effective investigation and prosecution of corruption cases. To prevent and eradicate corruption at the level of the Union, in May 2023, the Commission initiated a legislative proposal in this regard (European Commission, 2023b).

The analyzed report ruled that the Member States significantly improved the quality of their legislative processes, as well as the involvement of stakeholders in these processes. The Constitutional Courts have a decisive role in the system of checks and balances through the important decisions that were taken, especially regarding the organization of the national judicial systems. It is also stipulated that, in certain Member States, there is no official framework for the consultation of interested parties or it is not respected, and civil society organizations and human rights defenders have various obstacles in carrying out their work. The report drew the attention of the Member States regarding their implementation of the judgments of the European Court of Human Rights, the creation and the ensuring of an adequate framework of action for civil society, to provide it with effective ways, the involvement of all interested parties in the legislative process.

The EU Justice Scoreboard, which is drawn up annually, provides important information for the Rule of Law Report and for the European Semester - the EU's annual cycle of economic policy coordination. The 2024 edition of EU Justice Scoreboard includes several significant novelties. Among

these, we mention statistics on the accessibility to justice for children in civil and in criminal proceedings; notaries and their powers in succession procedures; the salaries of judicial and prosecutorial expert staff.

The EU Justice Scoreboard 2024 (European Commission, 2024) is divided into sections which relate to: efficiency of justice systems, quality and citizen-friendly justice systems and independence and justice systems. Regarding the first section (efficiency of justice systems), it was found that in 2022, civil and commercial cases were resolved in less than 1 year in most of the Member States and the lengths of proceedings decreased in 17 Member States, compared to 2021.

The EU Scoreboard therefore contains important information, indicating the progress, gaps and challenges faced by the Member States year after year. They can take over the best practice models in the field and thus determine new goals to achieve, for the best possible evolution of the national judicial systems.

Another way to defend the rule of law is represented by the Cooperation and Verification Mechanism for Romania and Bulgaria (CVM), created for the two states in question to undertake actions regarding the reform of the judicial system, effective measures against corruption and organized crime. This last field has referred only to Bulgaria. The analyzed mechanism was put into effect through the elaboration of reports by the European Commission for Romania and Bulgaria, starting in 2007. The latest reports, drawn up by the European Commission, in October 2019 (European Commission, 2019c), for Bulgaria and in November 2022 (European Commission, 2022), for Romania, established that the two states subject to examination satisfactorily fulfilled the reference objectives within the CVM, the commitments assumed at the time of accession to the Union European having been reached. As a result, the two decisions of the European Commission (European Commission, 2006a and 2006b), through which this mechanism was created, have been repealed by two other decisions (European Commission, 2023c and 2023d), elaborated on September 15, 2023, which produced legal effects from October 9, 2023.

3. JURISPRUDENCE OF THE COURT OF JUSTICE REGARDING THE GUARANTEE OF CERTAIN VALUES OF THE RULE OF LAW

In EU, the Court of Justice and the General Court have determined, in their jurisprudence, some principles that outline the content of the rule of law, such as: the principles of legality and legal security; prohibition of arbitrary executive power; the existence of independent and impartial courts; effective judicial control, which includes the guarantee of fundamental rights and equality before the law. Next, we shall analyze some relevant decisions, which reflect these requirements, with express reference to the effective jurisdictional protection, as well as to the principles of legality and legal security. Some of these will be

addressed in more detail, as they present important aspects that are directly related to the protection of the rule of law. In this regard, it is necessary to mention that the second subparagraph of Article 19(1) TEU requires Member States to establish the necessary remedies to ensure, in the areas covered by Union law, effective judicial protection; at the same time, Article 47 of the Charter confers on every litigant (the institutions of the Union and the Member States) the right to an effective remedy before a court and to a fair trial.

The effective jurisdictional control is part of the actual content of the rule of law, being an essential requirement for respecting the principle analyzed in the paper. The existence of a concrete control exercised by the courts has been enshrined, for a long time, in the jurisprudence elaborated at the level of the European Communities and, later, at the level of the European Union. In this sense, in the Case *Les Verts/Parliament* of 1986, the Court of Justice of the European Communities (CJEC, 1986a), the Court ruled that the European Economic Community is a community based on the rule of law, since neither its Member States nor its institutions can evade control, which aims at the conformity of their legal acts with the Treaty on the European Economic Community. Through Articles 173 and 184, on the one hand, and through Article 177, on the other, the Treaty established *a complete system of appeals and procedures, intended to entrust the Court of Justice with the control of the legality of the acts adopted by the institutions*. Natural and legal persons are thus protected against the situation in which acts of general applicability would apply to them, which they cannot challenge directly before the Court, given the special conditions of admissibility, provided for in the second paragraph of Article 173 of the Treaty.

Another significant judgment on the right to an effective remedy was the *Johnston* Judgment of 1986 (CJEC, 1986b). In this case, the Industrial Tribunal of Northern Ireland, in Belfast, referred several preliminary questions to the Court of Justice regarding the interpretation of the Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment between men and women. This directive determines a number of derogations from the prohibition of any discrimination based on sex. According to Article 6, any person who considers himself/herself aggrieved by discrimination must be able to exercise his/her rights through the courts.

Among the preliminary questions addressed to the Court, it is of particular importance for *the right to an effective remedy* if the applicant can rely, before the national courts of the member states, on the principle of equal treatment, enshrined in the applicable provisions of the directive. The court ruled that the judicial control imposed by the Article 6 reflects a general principle of law, which is the basis of the constitutional traditions common to the Member States. Based on this article, "every person has the right to formulate an effective action before a competent court against acts that he considers to be infringing on the

principle of equal treatment between men and women provided for by Directive 76/207. The member states have the obligation to ensure effective judicial control over compliance with the applicable provisions of Community law and national legislation, aimed at implementing the rights provided for in the directive".

In another important case from 1987 (CJEC, 1987), the Court of Justice decided: since free access to employment is a fundamental right, which the EEC Treaty confers individually for each worker in the Community, *the existence of a remedy of a judicial nature against any decision of a national authority refusing the benefit of that right is essential to secure for the individual effective protection for his right*. As the Court stated in its judgement of 15 May 1986 in the Case 222/84, commented above, that requirement reflects a general principle of Community law which underlies the constitutional traditions common to the Member States and has been enshrined in the articles 6 and 13 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

In a 2008 Court decision (CJEU, 2008), it explains the purpose and the limits of the judicial review. Therefore, the aim of the control of legality is to ensure that the predetermined limits of the powers on the areas of competence of the different State authorities, organs or bodies are respected, and not to determine these limits. As the Spanish government pointed out at the hearing, *the existence of a judicial review is inherent in the existence of a rule of law*. The case-law of the courts of a Member State is important to ascertain the limits of an intra-State body's areas of competence, because the interpretation of case-law forms an integral part of the laws defining those areas of competence. However, the review decision is limited to interpreting the law establishing the limits of the areas of competence of such a body and cannot generally call into question the exercise of those powers within those limits.

In a 2013 case (CJEU, 2013a), the General Court decide that "the judicial review of the lawfulness of a measure whereby restrictive measures are imposed on an entity extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. In the event of challenge, it is for the Council to present that evidence for review by the Courts of the European Union". For its part, in the same case, the Court of Justice specified that, when reviewing restrictive measures, the courts of the Union must, in accordance with the powers with which they are vested under the treaty, ensure a control, in principle complete, of the legality of all Union acts from the perspective fundamental rights, which are an integral part of the legal order of the Union. Article 52 paragraph (1) of the Charter of Fundamental Rights of the European Union admits restrictions on the exercise of the rights enshrined therein, if the respective restriction respects the substance of the fundamental right in question and if, respecting the principle of proportionality, it is necessary and effectively responds to objectives of general

interest, recognized by the Union (Tofan and Verga, 2023). Considering the adversarial principle, which is part of the content of the right to defense, the parties to a case must have the right to examine all documents or observations submitted to the court to influence its decision and to comment on them.

In another relevant judgment in the field from 2013, *Khadi* (CJEU, 2013b), the Court emphasized that the existence of a violation of the right to defense and the right to effective judicial protection must be assessed according to the specific circumstances of each case, particularly the nature of the act in question, the context of its adoption and the legal rules governing the respective matter. The effectiveness of the judicial review guaranteed by Article 47 of the Charter also requires that the Courts of the European Union are to ensure that the decision, which affects the person or entity concerned individually, is taken on a sufficiently solid factual basis. Thus, it is for the Courts of the European Union, in order to carry out that examination, to request the competent European Union authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination. It is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded.

In the case finalized with the Judgment of June 4, 2013 (CJEU, 2013c), the Court analyzed the provisions of Directive 2004/38/EC. Article 31 of the normative act cited above obliges the Member States to establish, in domestic law, the necessary measures to allow Union citizens and their family members to have access to judicial procedures and, as the case may be, to administrative appeals, in order to appeal or lodge an appeal against any decision, which restricts their right to move and reside freely in the Member States for reasons of public order, public security or public health. At the same time, the fundamental right to an effective remedy would be violated, if a court decision were based on facts and documents, which the parties themselves or one of them did not have the opportunity to examine and which, therefore, they could not express their point of view. That is why the member states are obliged, first of all, to provide for an effective judicial control both regarding the existence and the validity of the reasons invoked by the national authority regarding the security of the state, as well as the legality of the decision taken pursuant to Article 27 of Directive 2004/38; secondly, the member states have the duty to prescribe techniques and rules regarding this control. In this sense, “it is necessary for a court to be entrusted with verifying whether those reasons stand in the way of precise and full disclosure of the grounds on which the decision in question is based and of the related evidence”. Finally, the Court ruled that the articles 30(2) and 31 of Directive 2004/38/EC, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court with jurisdiction to ensure that failure by the competent national

authority to disclose to the person concerned, precisely and in full, the grounds on which a decision taken under Article 27 of that directive is based and to disclose the related evidence to him is limited to that which is strictly necessary, and that he is informed, in any event, of the essence of those grounds in a manner which takes due account of the necessary confidentiality of the evidence.

In the same sense, through another decision from 2014 (CJEU, 2014), the Court ruled that, according to Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, any person whose rights and freedoms are guaranteed of Union law are violated has the right to an effective appeal before a court, in accordance with the conditions established in the mentioned article.

In a case from 2015, (CJEU, 2015), the Court ordered that a regulation that does not provide for any possibility for the litigant to exercise legal means to have access to personal data, which concern him or to obtain the rectification or deletion of such data does not respect the substance of the fundamental right to effective judicial protection, as enshrined in Article 47 of the Charter.

Another important decision in the field under our analysis is the Case T-340/14 (CJEU, 2016). This concerned, among other things, a request, asking for the annulment of Council Decision 2014/119/CFSP of 5 March 2014 on restrictive measures against certain persons, entities and bodies in view of the situation in Ukraine, as well as the decision of its modification. Also, the cancellation of Regulation (EU) no. 208/2014 of the Council of March 5, 2014 on restrictive measures against certain persons, entities and bodies in view of the situation in Ukraine and the implementing regulation of the regulation in question has been requested. Communication of evidence during the proceedings was sufficient to guarantee the exercise of the right of defense and the right to effective judicial protection of the applicant. According to the examined decision, the respect for the rule of law is one of the primary values on which the Union is based, as is clear from Article 2 TEU as well as from the preambles to the EU Treaty and those of the Charter of fundamental rights. Respect for the rule of law is, moreover, a precondition for membership of the Union, under Article 49 TEU. The notion of the rule of law is also enshrined, under the alternative formulation of "rule of law", in the preamble to the European Convention on Human Rights. The Court also underlined that the case law of the Court of Justice and the European Court of Human Rights as well as the work of the Council of Europe, through the European Commission for Democracy through Law, provide a list non-exhaustive of the principles and standards that can be included in the notion of the rule of law. Among these are the principles of legality, legal certainty and the prohibition of arbitrary executive power; independent and impartial courts; effective judicial review, extending to respect for fundamental rights and equality before the law.

The Case Rosneft 2017 (CJEU, 2017) refers to a request for a preliminary ruling under the Article 267 TFEU from the High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court), made by decision of 9 February 2015, received at the Court on 18 February 2015, in the proceedings between, on the one hand, *PJSC Rosneft Oil Company*, a company registered in Russia, and, on the other, *Her Majesty's Treasury, The Secretary of State for Business, Innovation and Skills and the Financial Conduct Authority* ('the FCA'), concerning restrictive measures adopted by the European Union and imposed on certain Russian undertakings, including Rosneft. This request for a preliminary ruling relates to the validity of certain provisions of Council Decision 2014/512/CFSP of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended by Council Decision 2014/872/CFSP of 4 December 2014 and corrigendum ('Decision 2014/512'), and the validity and interpretation of Council Regulation (UE) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine and corrigendum, as amended by Council Regulation (EU) No 1290/2014 of 4 December 2014.

In this case, on 6 March 2014, following the unprovoked violation of Ukraine's sovereignty by the Russian Federation, the European Union suspended bilateral talks with it on visa matters and on the new global agreement, which was supposed to replace the EU Russia Partnership Agreement and stated that any other measure by the Russian Federation, which would be likely to destabilize the situation in Ukraine, would have considerable consequences for the relations between the Union and its member states, on the one hand, and the Russian Federation, on the other hand, in numerous economic fields. Decision 2014/512 specifically determined prohibitions on the export of certain sensitive products and technologies to the oil sector in Russia and restrictions on the access of certain operators in that sector to the European capital market. *Rosneft* is a company registered in Russia, which operates in the oil and gas sectors.

The Court ruled that, from the corroboration of Union legislation, the Court has such jurisdiction. Secondly, it was requested to establish whether the Court has the authority to control the legality of restrictive measures taken against natural or legal persons, measures provided for by this decision, when the Court is referred by a national court, which has doubts about the validity of the respective measures. The court answered affirmatively. In this sense, the Luxembourg Court concluded that the preliminary reference in the assessment of validity fulfills an essential function to ensure effective jurisdictional protection, where, as in the main case, both the legality of the national implementing measures and the legality of the decision underlying them, itself adopted in the field of CFSP, are brought back into question in a national jurisdictional procedure. The Court also emphasized that the very existence of an effective judicial control intended to ensure compliance with the provisions of Union law

is inherent in the existence of a rule of law. In the same vein, the Court ruled that the necessary coherence of the jurisdictional protection system requires, according to a constant jurisprudence, that the power to establish the lack of validity of the acts of the Union institutions, invoked before a national court, be reserved for the Court, in basis of article 267 TFEU (European Union, Treaty on the Functioning of the European Union). The same conclusion is required about decisions in the field of CFSP in respect of which the treaties give the Court a competence to control the legality. Likewise, the main objective of Article 267 TFEU is to ensure a uniform application of Union law by national courts, including Council decisions on taking restrictive measures against natural or legal persons. Therefore, divergences between the courts of the Member States on the validity of such decisions could compromise the very unity of the Union's legal order and undermine the fundamental requirement of legal certainty. The second preliminary question concerns the assessment of the validity of some provisions of the above-mentioned decision and regulation. Thus, the measures provided for in Articles 4 and 4a of Decision 2014/512 do not constitute restrictive measures against natural or legal persons, within the meaning of *the principles of legal certainty and the precision of the applicable law (nulla poena sine lege certa)*. The Court emphasized that the foreseeability of the law does not prevent the person concerned from being determined to resort to adequate counseling in order to assess, at a reasonable level in the circumstances of the case, the consequences that may result from a certain act. In this case, it must be considered that the terms whose impreciseness is invoked by Rosneft, without presenting an absolute precision, are not such as not to allow the litigant to know which acts and omissions engage his criminal liability. It follows from the Court's jurisprudence that the principle of the precision of the applicable law cannot be interpreted in the sense that it prohibits the progressive clarification of the rules regarding criminal liability through jurisprudential interpretations, if they are reasonably foreseeable. The fact that the terms used in Regulation no. 833/2014 may be subject to further progressive clarification by the Court cannot prevent a Member State from adopting sanctions to ensure the application of the regulation. Therefore, the principles of legal certainty and the precision of the applicable law must be interpreted in the sense that they do not prevent a member state from imposing criminal sanctions, applicable in case of violation of the provisions of Regulation no. 833/2014. Thus, the Court ruled that the very existence of effective judicial protection "is of the essence of the rule of law".

Another request for annulment of the same normative legal acts mentioned above in the case of *Andriy Klyuyev v Council of the European Union* from 2016 was brought to the General Court of the Union by Viktor Fedorovych Yanukovych (CJEU, 2019a), former president of Ukraine. Among the reasons invoked, there is also the violation of the right to defense and the right to an effective remedy. In this sense, the Council argued that the maintenance of the

applicant's name on the list of those against whom restrictive measures were ordered following the acts of March 2015 is based only on the letter of October 10, 2014. Before adopting the decision to keep the applicant's name on the list, the Council communicated the letter of 10 October 2014 to the applicant. Also, by letter of 2 February 2015, the Council informed the applicant of its intention to maintain the restrictive measures taken regarding to him, notifying him that he can present observations. Transmission of all information to the applicant, which constituted evidence during the proceedings, was sufficient to guarantee the exercise of the applicant's right of defense and right to effective judicial protection. In this way, he invoked reason was rejected by the General Court.

In the Case C-619/18 R (CJEU, 2019b), the European Commission brought an action against Poland for violating the second paragraph of the article 19 from the TEU and the article 47 of the Charter of Fundamental Rights of the European Union. The Court of Justice established that the reduction of the mandate of judges at the Supreme Court violated the principle of irremovability of judges. The legal acts by which the President of Poland ordered the extension of the mandate of some judges of the Supreme Court beyond the retirement age were arbitrary, with no way of appeal against them.

On 30 January 2019, in the *Stavytskyi v Council* judgment (CJEU, 2019c), the General Court ruled on the annulment action brought against Decision (CFSP) 2017/381 and Implementing Regulation (EU) 2017/374 by Mr. Erdward Stavytskyi, who had been kept on the list of persons, entities and bodies concerned by the restrictive measures adopted regarding the situation in Ukraine. The applicant, a former Minister of Energy and Coal Industry of Ukraine, had in fact been the subject of restrictive measures adopted by the Council because he had been the subject of criminal proceedings by the Ukrainian authorities for the misappropriation of state funds and public goods. The plaintiff essentially invoked: *the infringement of the obligation to state reasons; the unlawfulness, the disproportionality and the lack of legal basis of the relevant criterion; the manifest errors of assessment in applying that criterion to the applicant's case.* According to the Court's jurisprudence, the obligation to state reasons for normative legal acts provided by Article 296, second paragraph of the TFEU and Article 41, paragraph (2), letter (c) of the Charter must be adapted to the nature of the challenged act and the context in which it was adopted. The motivation of an act consists in the formal expression of the reasons on which this act is based. If these reasons are affected by errors, they affect the substantive legality of the respective act, but not its motivation.

To be able to establish that a misappropriation of public funds can justify an action of the Union within the framework of the CFSP, based on the objective of strengthening and supporting the rule of law, it is necessary at least that the disputed facts are likely to affect the fundamentals institutional and legal of the country concerned. The mentioned criterion must be interpreted in the sense that

it does not refer, in the abstract, to any act of misappropriation of public funds, but rather refers to acts of misappropriation of funds or public assets which, considering the amount or type of funds or assets misappropriated or the context in which they occurred, are at least likely to undermine the institutional and legal foundations of Ukraine, in particular the principles of legality, prohibition of arbitrariness of executive power, effective judicial review and equality before the law, and ultimately to undermine respect for the rule of law in this country.

We shall examine, in detail, a decision of the Court (Repubblika), which has a very special importance for the subject covered in this exposition. Thus, in case C 896/19 of April 20, 2021 (CJEU, 2021a), the request for a preliminary ruling concerns the interpretation of Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union. This request was made in a dispute between Repubblika, an association, registered as a legal person in Malta, whose object is to promote the protection of justice and the rule of law in this Member State, on the one hand, and the Prime Minister of Malta, on the other hand, in connection with an *actio popularis*, having as its object, among other things, the conformity with Union law of the provisions of the Constitution of Malta, which regulate the procedure for appointing judges. The Court also decided that, according to Article 19 paragraph (1) second paragraph of the TEU, it is incumbent on the member states to provide a system of appeals and procedures, which ensure effective judicial control in the areas regulated by Union law, as well as to ensure that the courts that are part of this system and that are likely to rule on the application or interpretation of Union law meet the requirements of effective jurisdictional protection. In this sense, the independence of judges in the Member States is of fundamental importance for the legal order of the Union in various ways. On the one hand, this is essential for the proper functioning of the judicial cooperation system, constituted by the preliminary reference mechanism provided for in Article 267 TFEU, since this mechanism can only be activated by a court that has the task of applying Union law, which fulfills among others this criterion of independence. On the other hand, the requirement of independence of the courts, which is inherent in the judicial activity, relates to the essential content of the right to effective judicial protection and to a fair trial, provided for in Article 47 of the Charter, which is of essential importance as a guarantor of the protection of all the rights conferred on litigants by Union law and the maintenance of the common values of the member states provided for in Article 2 of the TEU, in particular the value of the rule of law.

According to a constant jurisprudence of the Court, the guarantees of independence and impartiality required under EU law suppose rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as to dispel any reasonable doubt in the minds of individuals as to the

imperviousness of that body to external factors and its neutrality with respect to the interests before it. Pursuant to the principle of the separation of powers which characterizes the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive.

In another case (CJEU, 2021b), Hungary brought an action for annulment against the European Parliament resolution on a proposal calling on the Council of the European Union to determine the existence of a clear risk of a serious breach of the values on which the European Union is founded, according to Article 7(1) TEU. It invoked before the Court, among others, the violation of the principles of legal certainty, equal treatment, democracy and sincere cooperation. The Court rejected all the pleas and ordered the payment of all court costs by Hungary.

4. CONCLUSIONS

The phrase rule of law is an extremely complex notion, whose content is constantly enriched with new nuances of the requirements it implies. The analyzed principle covers all areas of development of a state or an international organization, which promote, in various ways, democratic values. In this sense, as presented in this presentation, the European Union benefits from a series of mechanisms to defend the rule of law, such as: the Rule of Law Report, the EU Justice Scoreboard, the Cooperation and Verification Mechanism for Romania and Bulgaria (CVM). Such ways of supporting the examined principle are also provided by art. 7 of the Treaty on the European Union, as well as the Rule of Law Conditionality Regulation.

This exposition considered, in particular, the way in which some requirements of the rule of law were transposed into practice, such as the principles of legality and legal security, effective judicial protection.

From the analysis of the examined decisions, it appears that various aspects of the content of the rule of law were violated especially by the Member States and, in some situations, even by Union institutions. Also, the Union's jurisprudence in the field acquires a special significance also by the fact that it contributes to clarifying the meaning of many notions related to the rule of law, which were explained by the Union courts, in some cases even in detail, especially when formulating some requests for preliminary questions.

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