Susana Sanz-Caballero

JUSTICE AS THE KEY COMPONENT OF THE RULE OF LAW: THE STATE OF PLAY IN EUROPE[1]

1. The Concept of the Rule of Law

We are living in turbulent times. Values that we take for granted are under attack. This is the case in Europe as well as in other parts of the world. It is quite perplexing to have to delve into the discussion of whether democracy is worth it or whether a "strong" regime would be more advisable. It is painful to experience that the rule of law is not defended as much as it used to be. As an example of this, the expression illiberal democracy is now widely used in politics as if this ambiguous, self-contradicting formulation was legitimate and exportable.

The rise of populism and nationalism is at the root of this situation which affects democracy and the rule of law, but also many other values that are enshrined in Article 2 of the Treaty on European Union (TEU). These values have been considered indisputable since the end of World War II in Western Europe. Some of these values are the following: respect for human dignity, freedom, equality, and respect for human rights. These values are supposed to be common to the European Union (EU) and the member states in a society in

[1] This article is one of the results of the Jean Monnet Chair of the CEU UCH on the Europe of values and human rights financed by the EACEA (Jean Monnet Project 587457-EPP-1-2017-ES-EPPJMO-CHAIR).

which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail.

The rule of law is not a theoretical concept. It is a precondition for ensuring that decision-makers are accountable and that public authorities do not commit abuses. It is also the only guarantee for equal treatment before the law and for the protection of human rights. However, its content is not always easy to grasp. That said, we do not have to invent a definition. There is no need to reinvent the wheel because the Council of Europe has been showing us the way since the post-war period.

To name but one of the more recent elaborations of this organization,, the *Rule of Law Checklist* of the European Commission for Democracy through Law (also known as the Venice Commission) established in 2016 that this notion requires a system of certain and foreseeable laws, where everyone has the right to be treated by decision-makers with dignity, equality, and rationality and in accordance with the laws, and to have the opportunity to challenge decisions before independent and impartial courts through fair procedures.

In this Checklist, the Venice Commission said that the rule of law standards, against which State activity is to be assessed, are the following: legality (including the supremacy of the law, compliance with the law, relation between international law and domestic law, law-making powers of the executive, law-making procedures, exceptions in emergency situations, duty to implement the law); legal certainty (including accessibility of legislation, accessibility of court decisions, foreseeability of the laws, stability and consistency of law, legitimate expectations, non-retroactivity, the *nullum crimen sine lege* and *nulla poena sine lege* principles, and *res judicata*); prevention of the abuse of powers; equality before the law and non-discrimination; access to justice (including the independence of the judiciary, the independence of individual judges, impartiality of the judiciary, autonomy of the prosecution service, independence and impartiality of the bar) and a fair trial (including access to courts, presumption of innocence, effectiveness of judicial decisions).

The rule of law is a constitutional model of political organization and a substantive tool for ensuring compliance with and respect for human rights. Thus, the Venice Commission warns against the risks of using a purely formalistic concept of the rule of law, merely requiring that any action was taken by public officials to be authorised by law. Unfortunately, this kind of misinterpretation is spreading, and there are distorted interpretations of the rule of law, such as the "Rule by Law or the "Rule by the Law". It is not always easy to explain what the rule of law is, but everybody is capable of identifying when it is absent because we associate the rule of law as the opposite of arbitrariness (Schukking, 2018).

Inspired by the Council of Europe, the European Commission also provided a definition of the rule of law in its Communications of July 2019 on the need to reinforce the rule of law in the EU (EC, 2019). The rule of law is considered a system in which all public powers always act within limits set out by law, in accordance with the values of democracy and fundamental rights, under the control of independent and impartial courts. So, both organizations include the value of justice as one of the key components of the rule of law. For both, the Council of Europe and the European Union, independence, quality, and efficiency are the key elements of an effective justice system and are crucial for upholding the rule of law and the values upon which the EU is founded.

Judicial independence is also a requirement stemming from the principle of effective judicial protection referred to in Article 19 of the TEU and from the right to an effective remedy before the court enshrined in Article 47 of the Charter of Fundamental Rights of the EU. It guarantees fairness, predictability, and certainty of the legal system. The Court of Justice of the EU defines judicial independence as:

"…presuppos(ing), in particular, that the body concerned exercises its judicial functions wholly autonomously without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable

to impair the independent judgment of its members and to influence their decisions" (CJ EU, 2018: C-64/16).

The President of the Court of Justice of the European Union clearly stated that the Union does not mean a mere integration through the law, but an integration through the rule of law. In his words, granting the rule of law means, in essence, that any person whose rights are violated should have access to an effective judicial remedy. Therefore, judicial independence is the pillar upon which a society grounded on the rule of law is built (Lenaerts, 2019).

The European Court of Human Rights confirms that the rule of law necessarily includes the separation of powers and the respect of independent and impartial courts (ECHR, 2017). Paradoxically, the judiciary has been captured today in at least two EU member states. In its recent rulings against Poland concerning serious breaches of the independence of the judiciary, the Court of Justice underlined that the rule of law is central to the EU legal order (CJ EU, 2019: C-619/18, C-192/18). According to the EU Court of Justice, the very existence of effective judicial protection guaranteed by independent judges is the essence of the rule of law (CJ EU, 2018: C-72/15).

It could not be otherwise; when the executive branch oversteps its purview by undermining the powers of the legislative body, and especially those of the judiciary, the rule of law is eroded, and we head towards an authoritarian regime. Why is judicial independence so important? Because judicial independence is the best antidote against impunity for unlawful acts. Without it, there is no real freedom, no real privacy, no checks and balances, no separation of powers, no guarantee against decision-makers' arbitrariness. Possible abuses of power within the democratic process must be controlled by courts (Sanders & von Danwitz, 2018). If court members become delegates of the government, judgments lose their authority, separation of powers vanishes, and the democratic system collapses. Judges cannot provide an effective judicial remedy if they succumb to internal or external pressures (Lenaerts, 2019).

Without judicial independence, the Law itself becomes a useless piece of paper. The rule of law covers how accountable laws are

passed, how fairly they are applied, and how effectively they work. Respect for the rule of law is essential for citizens to trust public institutions. Without such trust, democratic states cannot function. Likewise, in the EU, the respect of the rule of law by all member states produces mutual trust between all partners. Without such trust, the EU cannot function. In other words, the European project relies on the respect of the rule of law by all member states (CJ EU, 2018: C-64/16, C-216/18 PPU). It ensures the effective application of EU law and mutual trust. If the rule of law is applied in a member state, the judiciary of the other member states will trust the institutions of the former. Departure from the rule of law is the departure from the EU foundations. As a result, deficiencies in one member state impact both the other members and the EU as a whole. The Union has a shared responsibility in solving the rule of law issues wherever they appear. This is so because these threats challenge the legal, political, and economic basis of the EU.

That said, today, many European states seem to be less protective of their rule of law and more accepting of populism and nationalism, which adduce supposed widespread public grievances while seeking to exclude others. Populists invoke a proclaimed will of the people to discredit the opposition and to dismantle the system of checks and balances in which the rule of law is rooted, such as the separation of powers and the subsequent independence of the judiciary. For them, all actions are justified due to their exclusive moral authority to represent the people (Sanz Caballero, 2020). Thus, society is divided into two antagonistic groups: the pure people - which they claim to represent - and the despicable elite (Muro, 2017).

In other countries, populism is less advanced, but the rule of law is also regressing due to hard-line nationalist trends and xenophobia, which spread intolerance. Nationalists also invoke majority rule to dismantle the rule of law, to deny freedom of assembly the freedom of expression and/or to demonize migrants. Nationalists put themselves above democratic institutions and respect judicial decisions only if they go in their favour (Freixes Sanjuán, 2020). They defend the su-

premacy of a supposed "native" people whose language, traditions, or way of living is more "natural" and, hence, in their opinion legitimate than those of the rest of the local population.

2. Respect for the Rule of Law and Justice and the Process of Accession to the EU

According to Article 49 of the TEU, to become a member of the EU, the candidate State should respect the values referred to in Article 2 of the TEU and should be committed to promoting them. This is why it is worth examining how successful the European Union has been in changing the legal culture of its member states as it concerns the rule of law and justice standards. To do so, we will examine the role that these values have played in States that acceded to the EU recently, as compared to other "older" member states, which joined the process of European integration in the 1980s. Two points will be made in this respect: first, during the pre-accession and accession periods, the EU had a relatively positive influence on candidate countries in terms of newcomers acquiring a legal practice based on the rule of law standards. Second, after accession, in the new millennium, the EU proved powerless to confront the rule of law decline affecting some member states.

During the pre-accession and accession periods, conditionality played a significant role because there was a reward, namely, membership. That was the carrot (Wakelin, 2013). Unfortunately, at that time, the EU was too focused on the number of reforms and the number of new laws and new practices that accessing States were supposed to adopt. The European Commission proved to be a bit negligent in controlling both the quality of these reforms and their assumed (or presumed?) Europeanization message. As a result, formally, these States embraced the rule of law values, but it is not fully clear whether, in practice, the new values were sufficiently adopted and internalised in all the new member states.

After accession, as Kochenov and Bard (2018), put it: "The EU and its member states seem to be doing as little as they can to combat

the rule of law backsliding". The EU was very naïve to consider that once a State was granted full membership, the rule of law would be guaranteed forever. But conditionality is useless once the State is already a member. There is no carrot anymore.

After accession, the EU is dependent on the goodwill of the new member state and on the robustness of its commitment towards the new values and standards. member states are supposed to respect the rule of law by conviction, not because of an incentive, since the promise of accession does not exist anymore. When values are breached in a member state, only the stick seems to apply: the respect of the rule of law will depend on the strength of the Commission's enforcement powers. Sanctions for infringement, however, are not a good deterrent, especially if the defaulting State perceives that the EU is weak, that sanctions are light or that EU institutions disagree on how to confront the violation. That is the case presently. And the passing of time reinforces disobedient partners because the rule of law backslidings finally consolidates.

Unfortunately, there has been no monitoring mechanism in place to do follow up after accession. In other words, there has never been a kind of post-Copenhagen examination or review. In July 2019, in view of the seriousness of decisions taken in some Eastern European member states, the European Commission promised a Rule of Law Review Cycle for all member states. This is a good initiative that will have to be implemented by the new Commission. But this mechanism probably arrives too late for some member states where the denial of values has been steadily taking place, and the damage is already done. Right now, these countries can be easily labeled more as authoritarian regimes than democracies.

Once the previous point is clarified, it might be interesting to compare the accession experience of the countries of South Europe with that of Central and Eastern Europe since both geographic areas have had an authoritarian or totalitarian past. However, when Greece, Spain, and Portugal entered the European Communities in the 1980s, the Copenhagen criteria that define whether a country qualifies for

EU membership did not exist yet. Conditionality was not applied, at least explicitly. At that time, the constitutive treaties of the European Communities did not say a word about values nor about the rule of law, democracy, and the like. All of that came later, with subsequent treaty reforms starting from the 1990s onwards with the Maastricht Treaty, and continuing with those of Amsterdam, Nice, and Lisbon.

Yet, Greece, Spain, and Portugal knew that to become Members, they had to be full-fledged democracies. In fact, the attempt of General Franco to knock on the door of the European Communities in the 1960s ended up as a tremendous failure for Spain. The South European States understood that if they were to enter this exclusive club that is now called the European Union, they would have to transform their laws, administrative practices, judiciary, social schemes, armed forces, in order to show respect for the rule of law. European integration had a very positive impact on the democratization processes in these three States (Jurje, 2018). They knew that it was not only a question of putting out ballot boxes at regular intervals. It was a question of embracing, with conviction, principles such as pluralism, legality, separation of powers, judicial independence, freedoms, human rights, etc. It would have been extremely hypocritical and fraudulent if Greece, Spain, or Portugal had embraced democratic standards with the only purpose of being admitted in the European Communities and once inside to go back to autocracy against the spirit of European law. These States were recent democracies when they entered the European Communities, but from then on, they respected the non-written norms according to which only democratic States could qualify for accession, and members should continue being democracies.

Greece, Spain, and Portugal have respected the rule of law thus far with, of course, episodic failures that have been corrected by independent judiciaries because sporadic infringements are a normal feature of any legal order. We can quote the example of Spain, which afer being a dictatorship for 40 years, has become a full democracy, and it did so in a peaceful and orderly manner. The main reason for it was the conviction of the Spanish population and the political elites during

the transition period of the need to go "back to Europe". For them, Europe meant democracy, freedom, pluralism, separation of powers, legality, judicial independence, and human rights. It was believed that the adherence to these values had no turning point, as was demonstrated by the attempted *coup d'État* that took place in 1981, which was abhorred and rejected by the majority of the Spanish population.

3. Justice Backsliding in Hungary and Poland

The independence of the judiciary in Hungary and Poland is receiving serious and sustained attacks. Of course, justice backsliding is only part of the evidence of a wider plan to restrain both the freedoms and the democratic character of these societies. The governmental strategy in Hungary and Poland includes the curtailment of the power of the press and social media, NGO control, academic submission, anti-immigration rhetoric, and dissidence silencing, to name but a few (Marody, 2019).

In Hungary, the undermining of the judiciary started in 2010. The governing party *Fidesz* introduced wide-ranging laws impacting the legal status and the salaries of judges. It altered the organization and administration of the courts by changing the nomination process of judges to one favouring the majoritarian party in parliament. It also lowered the retirement age of acting judges, curtailed the powers of the Hungarian Constitutional Court, and increased the number of judges of this bench, the newcomers being all sympathetic to the *Fidesz* government. There was also gender discrimination concerning the retirement age.

In Poland, since the Law and Justice party came to power in 2015, Warsaw embarked on a process of de-Europeanisation affecting the separation of powers and the independence of the judiciary that allow for a functioning democracy (Owczarek, 2017). No less than thirteen laws were passed eroding the complete structure of the judiciary: the constitutional court, the Supreme Court, ordinary courts, the prosecutors' office, and the council of the judiciary.

To name but a few of these changes, the Constitutional Court presented issues regarding the legality of the new method of appointing judges that depends on the executive branch, as well as the non-publication of judgments opposing government interests. Three constitutionally elected judges were banned from taking the oath of office, whereas three others who had been elected unconstitutionally, were allowed to do so. Severe budget cuts made the institution irrelevant and merely decorative. In addition, compulsory judicial decisions have been taken without the presence of the minimum quorum of members required by law.

Concerning the Polish Supreme Court, there has been a reduction in the compulsory retirement age while the judges were still in office with ongoing mandates. In so doing, Poland has breached the principle of non-removal. The Polish president has been given discretionary powers to extend the mandate of individual judges without any clear criteria and no obligation of judicial review of the final decision. The reform gave the President the power to make new appointments. The executive is also empowered to amend the rules of the procedure of the Tribunal and to decide on case allocations. An extraordinary appeal chamber now has the power to overturn final judgments within five years and, in some cases, within twenty.

Ordinary courts have suffered similar changes with the executive being empowered vis à vis the judges (Lavelle, 2019). Their capture happens by submitting and subordinating all the presidents of courts to the Minister of Justice. The latter has the power to dismiss them discretionally. Additionally, the offices of the Minister of Justice and that of the Public Prosecutor have been merged, affecting the impartiality of the latter.

Poland went further by establishing a disciplinary regime according to which ordinary judges could be sanctioned if they hand out a ruling which displeases the executive or if they ask the Court of Justice of the European Union for a preliminary ruling. As the President of the Court of Justice of the EU has put it: denying national judges the possibility to interact with the Luxembourg court and ask

it about the validity of the interpretation of EU norms is tantamount to attacking the independence of courts (Lenaerts, 2019). Judicial independence guarantees that judges will only introduce preliminary remissions based on legal grounds and not on political arguments. Judicial independence also ensures that national courts will execute the preliminary rulings delivered by the Court of Justice following only strict legal considerations.

Even the education of future judges is now under the strict control of the ruling party (Sanders & von Danwitz, 2018). It resembles political control of the judiciary and censorship. This has made the European Commission conclude that the separation of powers and the independence of the judiciary are at serious risk in Poland (COM, 2017). In the same vein, the United Nations Special Representative on judicial independence expressed concern after his visit to Poland (OHRHC, 2017). The Venice Commission went as far as to say that the constitutionality of Polish laws could no longer be guaranteed[2].

The Luxembourg-based court has condemned both Poland and Hungary on the previously stated grounds. Different judgments on infringements procedures (Article 258 of the Treaty on the Functioning of the European Union) have ruled that these reforms were contrary to EU Law and that Poland and Hungary had to restore the courts to the situation *ex ante* (CJ EU, 2019: C-619/18, C-192/18). And there are still many preliminary rulings pending because the Court has been

[2] CDL-AD(2017)031 11/12/2017 Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017); CDL -AD(2017)028 11/12/2017 -Poland - Opinion on the Act on the Public Prosecutor's office, as amended, adopted by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017); CDL-AD(2016)026 14/10/2016 Poland - Opinion on the Act on the Constitutional Tribunal, adopted by the Venice Commission at its 108th Plenary Session, (Venice, 14-15 October 2016); CDL-AD(2016)012 13/06/2016 - Poland - Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts, adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016); CDL-AD(2016)001 11/03/2016 -Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).

all but overrun by more than ten Polish tribunals seeking clarifications on the EU requirements on judicial independence[3].

However, the EU should be criticised because of the scope of the lawsuits introduced by the Commission and also the final rulings of the Court. This is the case because both the lawsuits and their subsequent judgments did not get at the real and central issue, which is the systematic attack that the judiciary is undergoing in the two States. It is not only the technical question of the discrimination on the grounds of gender or age. It is neither the technical question of the judges' disciplinary regime nor the unexpected enlargement of the judicial bench on political grounds. It is all that at the same time, but it is also more than that. The problem is that the Court of Justice of the EU is not addressing the situation as a systemic attack on judicial independence, or as a general undermining of the judicial power for the benefit of the executive power.

The judicial reforms in Poland and Hungary are neither specific nor sporadic (Feledy, 2017). They pursue a systematic strategy of control of the judiciary by the executive (in the case of Poland) and by the executive and legislative branches (in the case of Hungary). These cases show a truly existential European crisis of values since the attack to the judiciary in one member state is an attack on the EU itself. The lack of limitations on illiberal practices may encourage other governments to follow suit and to abuse their citizens' rights.

The Justice Scoreboard is the Commission's comparative information tool that aims to assist the EU and the member states to improve the effectiveness of their national justice systems by providing objective and reliable data on their judiciary. Concerning the situation of the judiciary, the 2019 edition of the Justice Scoreboard indicates that five other member states received recommendations relating to their justice system. These five States are Croatia, Italy, Cyprus, Portugal, and Slovakia. Regarding Croatia, the recommendations touch upon lengthy court proceedings and sizeable backlogs as well as upon the

[3] Cases C-522/18; C-537-18; C-585/18; C-624/18; C-625/18; C-668/18; C-824/18; C-558/18; C-563/18; C-623/18.

underuse of electronic means, which affects the quality and efficiency of the system (Council, 2018).

Other eleven member states, including Spain, are also facing specific challenges that are being monitored by the European Commission (EC, 2019). Some months ago, the Spanish Prime Minister pretended in an electoral interview that the State Public Prosecutor should follow his orders because she represented the interests of the government. He got it wrong since the Public Prosecutor represents the State's general interest, not those of the executive. This institution is autonomous from the government in its work. And the judiciary is steadily receiving increasing verbal attacks from one of the political parties, which is part of the coalition government, *Unidas Podemos*. The new polarization and fragmentation of the Spanish Parliament are progressively degrading national politics and empowering extreme left and extreme right populism as well as nationalistic and secessionist movements, all at the same time. The situation is explosive and could easily end up provoking the rule of law breaches. The situation is also putting the Spanish judiciary in a very delicate position in view of the new governmental rhetoric favouring a change in the way judges are trained and selected from a system based on merit and public exams to one where the members of the government would have more of a say.

4. Conclusions

The increased support for populist governments is not a phenomenon limited to Poland or Hungary. Unfortunately, populism is on the rise, and it will be a challenge for democracies in the near future. It will also test the strength of the system of the rule of law, including the robustness of the EU member states' judiciaries. However, populism is not the exclusive prerogative of newcomers. The rule of law is being challenged in old and consolidated democracies such as France, Netherlands, Germany, etc., where populism is also growing. Not to mention Italy or Spain, where leftist populist movements are already part of the government.

In times of crisis of values and of illiberal democracies, there is a need, more than ever, for a strong Europe. In the past, the EU was able to produce positive changes in the new member states in a way that led them to embrace the rule of law. The EU was also successful in deterring the founding member states from backsliding towards undemocratic regimes. But the truth is that if Hungary and Poland applied for membership today, they would not be admitted as members of this exclusive club that they already belong to. The shocking speed with which the destruction of the rule of law is taking place in these two countries proves the importance of a strong and convincing legal culture beyond merely written norms. The undemocratic drift of Hungary and Poland is a full attack against all European values as enshrined in Article 2 of the TEU. The separation of powers and judicial independence is at the core of the attack since ruling parties Law and Justice Party and *Fidesz* are aware that a robustly independent judiciary curbs plan to bypass the national constitutional order. Populist leaders know well that they need a tamed and controlled judiciary to implement their illiberal plans and policies.

Unfortunately, the rise of populism and nationalism in many other European States does not help as they blow up the existing consensus on the essential role played by the rule of law in our societies. As evidence of this, Croatia and Spain rank first and fourth, respectively, as the EU member states, where the general public most perceives a lack of independence of the judiciary, according to the Justice Scoreboard. This is not good news at all. Could the root of the problem be a lack of sufficient conviction and internalising of the role played by the rule of law and values within the EU? Probably. And it is a bad sign that Ursula von der Leyen needed the votes of Polish Law and Justice Party to be elected President of the European Commission. Has the new Commission had its hands tied concerning the implementation of strong and effective measures against defaulting States? The future will tell whether this is the case.

References

Primary sources:

COUNCIL OF EUROPE: CDL -AD(2017)028 11/12/2017 -Poland - Opinion on the Act on the Public Prosecutor's office, as amended, adopted by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017).

COUNCIL OF EUROPE: CDL-AD(2017)031 11/12/2017 Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017).

COUNCIL OF EUROPE: CDL-AD(2016)001 11/03/2016 -Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).

COUNCIL OF EUROPE: CDL-AD(2016)012 13/06/2016 - Poland - Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts, adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016).

COUNCIL OF EUROPE: CDL-AD(2016)026 14/10/2016 Poland - Opinion on the Act on the Constitutional Tribunal, adopted by the Venice Commission at its 108th Plenary Session, (Venice, 14-15 October 2016).

COUNCIL OF THE EU: *Recommendation of 13 July 2018 on the 2018 National Reform Programme of Croatia and delivering a Council opinion on the 2018 Convergence Programme of Croatia* (2018/C 320/10), OJ C 320/10 of 10 September 2018.

COURT OF JUSTICE OF THE EU; C-192/18 *Commission vs. Poland* of 5 November 2019

COURT OF JUSTICE OF THE EU: C-619/18 *Commission vs. Poland* of 24 June 2019.

COURT OF JUSTICE OF THE EU: C-64/16 *Associaçao sindical dos juizes portugueses vs.Tribunal de Contas* of 27 February 2018.

COURT OF JUSTICE OF THE EU: C-72/15 *Rosneft Oil Company vs. Her Majesty's Treasury and others*, Grand Chamber of 27 February 2018.

COURT OF JUSTICE OF THE EU: C-216/18 PPU *ML vs. Minister for Justice and Equality* of 25 July 2018.

EUROPEAN COMMISSION (2017) 835: *Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law* (Procedure 2017/0360/NLE).

EUROPEAN COMMISSION: Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions *Strengthening the rule of law within the Union. A blueprint for action*, COM/2019/343 final of 17 July 2019.

EUROPEAN COMMISSION: *Justice Scoreboard 2019*, OPOCE, 2019.

EUROPEAN COURT OF HUMAN RIGHTS: *Baka vs. Hungary*, no. 58688/11, 19 January 2017, par. 135; *Kamenos vs. Cyprus*, no. 147/07, 31 October 2017, par. 103.

OHRHC: "Poland Judicial Independence under Threat, UN expert finds", 27 October 2017.

Secondary sources:

BURAS, P.: «Europe and its discontents. Poland's collision course with the EU", in *European Council on Foreign Relations,* 7 September 2017, accessible at the following link: https://www.ecfr.eu/publications/summary/europe_and_its_discontents_polands_collision_course_with_the_eu_7220

FELEDY, B.: "Hungary: Populisms or Politics?", in *Populism in Europe: From Symptom to Alternative?*, CIDOB Report # 1, Barcelona, pp. 45-48.

FREIXES SANJUÁN, T.: "Populismos y Nacionalismos en Europa", in *El futuro de la Unión y la Amenaza de una no Europa*, Sanz Caballero, S. (ed.), Thomson Reuters, Navarra, 2020, pp. 145-163.

JURJE, F.: "Europeanization in new Member States. Effects on Domestic Political Structures", in *Europeanization Revisited: Central and Eastern Europe in the European Union*, MATLAK, M. AND OTHERS (eds.), EUI, Florence, 2018, pp. 52-70.

KOCHENOV, D. and BARD, P.: "Rule of Law Crisis in the New Member States of the EU", in *Reconnect Working Paper* no. 1, July 2018.

LAVELLE, P.: «Europe's Rule of Law Crisis», in *Trinity College Law Review,* 2019, vol. 22, pp. 35-39.

LENAERTS, K.: La Unión Europea como un ordenamiento basado en el Derecho , que contribuye a la paz y estabilidad internacional", speech addressed at the University Carlos III, Madrid, 24 October 2019, accessible at: https://www.tribunalconstitucional.es/ActividadesDocumentos/2019-10-25-00-10/La%20Uni%C3%B3n%20Europea%20como%20un%20ordenamiento%20basado%20

en%20el%20Derecho%20que%20contribuye%20a%20la%20paz%20y%20la%20estabilidad%20internacional.pdf

MARODY, M. "The Transformations of Polish Society", in *Social Research: An International Quarterly,* 2019, vol. 86, no. 1, pp. 57-81.

MURO, D.: "Let the People Rule: Definitions and Theories of populism", in *Populism in Europe: From Symptom to Alternative?*, CIDOB Report # 1, Barcelona, pp. 9-15.

OWCZAREK, D.: "The Roots of Populism in Poland: Unsustainable Growth and Cultural Backlash", in *Populism in Europe: From Symptom to Alternative?*, CIDOB Report # 1, Barcelona, pp. 39-43.

SANDERS, A. and VON DANWITZ, L.: «Selecting Judges in Poland and Germany: Challenges to the Rule of Law in Europe and Propositions for a new Approach to Judicial Legitimacy", in *German Law Journal*, 2018, vol. 19, pp. 769-815.

SANZ-CABALLERO, S.: "La crisis de Valores y la Amenaza de una no Europa", in *El futuro de la Unión y la amenaza de una no Europa*, Sanz Caballero, S. (ed.), Thomson Reuters, Navarra, 2020, pp. 99-126.

SCHUKKING, J.: "Protection of Human Rights and the Rule of Law in Europe: A Shared Responsibility", in *Netherlands Quarterly of Human Rights*, 2018, vol. 36, no. 2, pp. 152-158.

WAKELIN, E.: "EU Conditionality: An Effective Means for Policy Reform?", November 2013, accessible at: https://www.e-ir.info/pdf/43900