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The Formation of English-Language Lexical Competence of Application of the Conditionality Mechanism Concerning the Rule of Law in the European Union

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Abstract: The paper focuses first on the concept of "rule of law" and its requirements. The legislative framework of the European Union on the conditionality mechanism on the rule of law is analyzed in detail. The last part of the exposition concerns the effective application of the legislation ensuring the protection of the European budget in case of violation of the principles of the rule of law by a Member State. In this regard, some judgments of the Court of Justice of the European Union are commented on, given by it in a few cases involving Hungary and Poland, on the one hand, and the European Parliament and the Council of the European Union, on the other part.
The purpose of this article is to highlight the complexity and the very special importance of the concept of the rule of law, essential value expressis verb is consecrated, to analyze the specific legislation in the field existing at the level of the European Union. Finally, the shortcomings of the Member States in respecting the principle examined are highlighted; in this respect, several judgments of the Court of Justice concerning systematic infringements of the rule of law by some Member States of the European Union are analyzed. The historical and the comparative methods are used in this presentation.
The article is of particular importance to the European Union, to the experts in the field, but especially to the Member States of the European Union, which have undertaken to take over and give priority to its specific legislation by joining this regional organization. Although Poland and Hungary have been convicted for the systematic violations of the rule of law, they have not remedied their situation, despite the sanctions applied.

Keywords: *rule of law, conditionality mechanism, European Union, Poland, Hungary*

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1. Introduction

The phrase "rule of law" is, in fact, an interconnection and a balance between two fundamental notions - state and law. The intrinsic link between these two social phenomena has been fully emphasized in the legal literature. Thus, Leon Duguit pointed out that law without force is powerless, but force without law is barbarity and qualified the natural law as a principle of the limitation of the state.

The principle in discussion has an essential influence on the evolution of a postmodern democratic and legal system.

The ideology formed in the postmodern society referring to the rule of law has enriched significantly and had and continues to have an overwhelming importance regarding the determination of the democratic character or not of the existing political regimes.

This ideology, an essential element related to postmodernism, contributed to shaping and maintaining a certain type of political power in the European states.

In the same sense, the principle of the separation of powers in the state founded by Montesquieu, in 1748, an essential requirement of the rule of law, has changed in terms of its reformulation. The principle enunciated above has been maintained as a fundamental criterion of a real democracy.

In the context of globalization, an essential characteristic of the contemporary world, the role of the nation state has decreased, in favor of international organizations, which are constantly redefining the content of the rule of law. The latter adapts, continuously, to the existing realities.

The accession of the states to the structures with an international character, which involves, among other aspects, the ceding of the exercise of some attributes of sovereignty in their favor, has radically modified the concept of absolute state sovereignty. Therefore, today we are talking about the relative sovereignty of the state, which must respect, on the one hand, its internal laws, and, on the other hand, the international legal order specific to the international organizations of which it is a part. Thus, the integration of states into the European Union represents a complex process of taking over its entire legislative system (acquis), which is based on the principle of supremacy or priority of European Union law over domestic law.

In the same sense, the demands of the rule of law, such as the freedom of the press, the independence of the judiciary, the concrete guarantee of fundamental rights, acquire new values, determined by the specifics of postmodern society.

As Gabor Mate judiciously emphasized, "the rule-of-law model is far from being a closed system, and as such it needs to be constantly developed. Nothing guarantees that its achievements will last forever" (Máthé,2019).

According to professor Chevallier, in a formal sense, the rule of law supposes that the various organs of the state can act only by virtue of their legal capacity and that they are obliged to respect the superior legal norms: the exercise of power becomes a competence, established and framed by law; in a material or substantial sense, the rule of law implies, this time, that the law in force complies with certain principles and values; it is supposed to constitute a clear, precise, stable framework that actions; the rule of law presents itself as a mechanism for the protection of rights and freedoms (Chevallier, 2018).

The compliance with the rule of law has also been imposed at the level of international organizations. Thus, in the European Union, the rule of law was initially enshrined in the preamble to the Maastricht Treaty and in the article 2, as well as in the article 49 of the Treaty on EU, according to which the observance of the rule of law is a condition for accession to the European Union. Later, the principle in question was taken over in subsequent treaties, being included in the content of the Lisbon Treaty. Over time, the aim has been to strengthen the rule of law through various positions or legal acts, which will be analyzed in detail in a distinct section of the paper.

The objectives of this expose are multiple. Primarily, the author wants to highlight the essential importance of the principle of the rule of law in the shaping of a democratic regime by emphasizing its requirements, presented, in an ample way, in the legal literature. Secondly, the detailing of the legislative framework on the rule of law at the level of the European Union was pursued because the rule of law is one of the essential values, which are the basis of this international organization in the European space. In this sense, the conditionality mechanism on the rule of law is analyzed in detail. Another important objective reflecting the educational perspective of the research is to highlight the flagrant violation of the analyzed principle by some member states of the European Union, underlined by some decisions of the EU Court of Justice pronounced in this regard. Therefore, the work appears as an alarm signal regarding the systematic violation of the rule of law by Hungary and Poland, which, although they receive precise sanctions, do not obey them, but have a critical attitude towards them. Last but not least, through the analysis of the sanctions applied, the aim was to draw the attention of all member states of the European Union to comply as best as possible with the legislation specific to the highlighted field.

2. General aspects regarding the rule of law

The term *rule of law* was first used in the nineteenth century in German law, under the name of *rechtsstaat*, deriving from Kant's conception of the state and law, which assimilates them, in the sense that the state is no other than "rule of law". One of the founders of this principle, R. von Mohl, considered that it is necessary to limit the absolutism of the police state by adopting precise laws and creating independent courts (Miculescu, 1998).

The phrase *rule of law* later became known by various names. Thus, the expression *l'état de legalité*, which appeared in France, had the meaning of a state that respects the principle of legality in the works of important representatives, such as Carré de Malberg, Eisenmann, Prélot, Burdeau, Capitant, with some differences in approaching this concept. The notion of rule of law has also been analyzed in detail in the anglo-saxon legal space, under the name *rule of law*, which has two senses: the royal supremacy, which has passed into the sovereignty of the Parliament and the primacy of law (Dicey, 1982).

The professor Tudor Drăganu highlighted the essential elements that characterize the rule of law: the organization of the state based on the separation of powers in the state; promoting the rights and freedoms inherent of human nature; the respect of legal provisions by state bodies in their entire activity (Drăganu, 1992).

Some Romanian authors who analyzed the concept of the rule of law noted that, through its establishment, the aim was to legitimize the coercion, limit the power of the administration and its control, the supremacy of the law and the Constitution (Vrabie, 1999).

Other specialists in the field highlighted the traits of the rule of law as follows: the authority characterized by the constitutional regime (establishing in the Constitution the fundamental principles of organization and exercise of the three powers); the equality of all before the law, the non-retroactivity of the law, the law truly expresses the will of the people; the guarantee of the primacy of the fundamental law through political or jurisdictional control; institutionalization and functionality of administrative contentious; the right to defense based on the presumption of innocence, correlated with the independence and the impartiality of the judiciary; the effective realization of an authentic, pluralistic democracy and, within it, the affirmation of the political pluralism, free elections, organized at certain intervals, by universal, equal, direct and secret ballot, guaranteeing the civil rights and freedoms enshrined in the Constitution (Ionescu C., 2005).

Judiciously, in the Romanian legal literature it is emphasized that the analysis of the rule of law construction process substantiates not only its

complexity, but also the difficulties and obstacles arising towards the accomplishment of its goals. The rule of law remains a process susceptible to feel ebb movements. In addition, its fulfillment remains imperfect. Along with its development and improvement, the rule of law shows its weaknesses and deficiencies (Gilia, 2020).

It was rightly found that the major and perennial problem of the concept of the rule of law is the difficulty of relating to the phenomenon of political power. The rule of law tends to limit or even reduce the already established state power, to replace the power of the people with the "rule of law", the primacy of law over politics (Balan, 2020).

The exigencies of the rule of law deduced from the analysis of the principle addressed in the paper in the legal literature (Popescu S., 1998)are: the separation and balance of powers in the state, the supremacy of law, the provision and the guarantee of human rights and freedoms, the political pluralism, the independence and impartiality of courts, the provision of a more complex procedure for revising the Constitution, the independence of the press, the effective judicial protection by independent courts etc.

The mechanisms for guaranteeing these requirements that the rule of law implies refer to: control of the constitutionality of normative acts, the settlement of disputes between public administration and individuals, performed by administrative contentious courts, control exercised by the Ombudsman, control for the respect of fundamental rights of citizens, free access to justice. In the same sense, the Constitutional Court of Romania emphasizes, in its jurisprudence, that "a rule of law must have a normative mechanism able to define both the positive aspect, by indicating what is limited to its content, and the negative one of the laws, by indicating the limits or conditions that are required" (Decision of the Constitutional Court, 696, 2021).

The rule of law in the formal sense has evolved towards the rule of law in the material, substantial sense, which aims at the effective, concrete application of the analyzed principle.

3. The legislative framework of the European Union on the rule of law

In the European Union, the rule of law was initially enshrined in the preamble to the Maastricht Treaty on European Union (TEU), which provides that 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 same document (the article 2) consecrates the rule of law as a universal value at the European Union, alongside the human dignity, the freedom, the democracy, the equality, the human rights. Also, one of the

principles underlying the Union's external action is the rule of law (the article 21): "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". In the same sense, the article 49 of the above-mentioned Treaty conditions the state's accession of the EU on its respect for the rule of law. Later, the principle of the rule of law was taken over in the future treaties, which amended the Maastricht Treaty, and is inscribed, in a relatively similar way, in the content of the Treaty of Lisbon, currently in force. The violation of the article 2 mentioned above determines the application of the procedure provided in the article 7 of the EU Treaty. In this regard, "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 take into account 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".

At the same time, the EU Charter of Fundamental Rights enumerates the fundamental values of the European Union, stating that the Union is based on the principles of democracy and the rule of law.

In its case law, the Court of Justice of the European Union has emphasized that a "Union based on the rule of law" means that the EU institutions are subject to judicial review of the compatibility of their acts not only with the Treaty but "with the general principles of law which include fundamental rights" (Case C-50/00 P, Judgment of the Court of 25 July 2002; Case C-64/16, Judgment of the Court of 27 February 2018).

The developing jurisprudence of the Court also emphasizes how systematic problems reffering to the rule of law can have a certain influence in the field of Union finances (Cases C-617/10, ÅkerbergFransson; Case C-105/14, Taricco).

Within The Cooperation and Verification Mechanisms (CVM) based on the Acts of Accession for Romania and Bulgaria, systemic deficiencies can be found regarding the rule of law, registered by the states concerned in their integration process. In this paper we do not refer to these difficulties nor to those that determine the initiation of the infringement procedure foreseen in the article 248 of the Treaty on Functioning of the European Union (TFEU). These are distinct from those that trigger the mechanisms provided in art. 7 TEU.

Over time, at the level of the European Union, the strengthening of the rule of law has been considered, through various legal acts and communications, elaborated by the European Commission, the European Parliament, the Council and the European Parliament together. To this end, *the Commission Communication of 15 October 2003*, entitled *Respecting and promoting the values on which the Unionist founded* was first issued. (European Commission, 2003). This legal act consists of two parts, which relate in detail to: the conditions for applying article 7, the means of securing respect for and promotion of common values based on the article 7 of the Union Treaty.

The 2014 Commission Communication (European Commission, 2014) stated that "the rule of law is the backbone of any modern constitutional democracy. It is one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU and, as such, one of the main values upon which the Union is based". Through this legal act, the Commission aimed to establish a new legislative framework, to resolve future threats to the rule of law in Member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met. This framework does not prejudice the Commission's powers to address specific situations falling within the scope of EU law by means of

infringement procedures under the article 258 of the Treaty on the Functioning of the European Union (TFEU). The document examined enumerates, for the first time, the principles underlying the rule of law. So, the principles which form the content of the rule of law "include legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; equality before the law". The mechanism set out in this document aims to avoid a systemic threat to the rule of law in any EU Member State and is triggered when national public authorities develop measures or tolerate situations that are likely to harm, systematically and negatively, all mechanisms and institutions, through which the analyzed principle is protected. This procedure has three phases, highlighted in detail in the previously cited document. During the procedure, the State concerned must observe the principle of sincere cooperation laid down in Article 4 paragraph 3 of The European Treaty (TEU). As the doctrine rightly states, this obligation has only been partially complied with by the States which have been the subject of this mechanism, is vaguely defined in the Treaty and, consequently, its application depends on many factors to be considered (Carp, 2020).

In October 2016, the European Parliament adopted a Report containing recommendations to the European Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights. The report proposed the elaboration of an Inter-institutional Agreement on arrangements concerning monitoring and follow up procedures on the situation of Democracy, the Rule of Law and Fundamental Rights in the Member States and EU institutions. The EU Pact will contain the Commission's Rule of Law Framework and the Council's Rule of Law Dialogue into a single Union instrument. This document proposed, for the first time, the elaboration of an Annual Report on Democracy, the Rule of Law and Fundamental Rights, which will be drafted by the European Commission in consultation with an expert panel. This Report lists in detail the issues that highlight the concept of the rule of law: "separation of powers; the impartial nature of the state; the reversibility of political decisions after elections; the existence of institutional checks and balances which ensure that the impartial state is not called into question; the permanence of the state and institutions, based on the immutability of the constitution; freedom and pluralism of the media; freedom of expression and freedom of assembly; promotion of civic space and effective mechanisms for civil dialogue; the right to active and passive democratic

participation in elections and participatory democracy; integrity and absence of corruption; transparency and accountability; legality; legal certainty; prevention of abuse or misuse of powers; equality before the law and non-discrimination; access to justice: independence and impartiality, fair trial, constitutional justice (where applicable); an independent legal profession; particular challenges to the rule of law: corruption, conflict of interest, collection of personal data and surveillance". On the basis of the above mentioned Report, the European Parliament has adopted an appropriate resolution (European Parliament, 2016b).

In *May 2018,* the European Commission has elaborated a *Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in the Member States* (European Commission, 2018b). Such a legal act has been drafted because there was not a specific financial procedure in case of problems relating to the rule of law and potentially affecting the sound management of Union funds. The Commission will determine the existence of a general deficiency, based on information received from the relevant institutions. By a written notification, the European Executive will inform the state concerned of the reasons for such a deficiency. The state in question shall have the opportunity to submit comments within one month of such notification, proposing appropriate measures. The Council shall take a number of appropriate measures in such circumstances:the suspension of payments and of commitments, a reduction of funding under existing commitments, and a prohibition to conclude new commitments with recipients. The Council may also lift the measures taken in the event of a remedy. The Commission proposal aims at the adoption by the European Parliament of a regulation, which contains provisions on the definition of a few terms, the content of the measures taken, as well as their lifting and the applicable procedure. This document defines some expressions, such as:"generalised deficiency as regards to the rule of law", "government entity", "the rule of law". The latter "includes the principles of legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection by independent courts, including of fundamental rights; separation of powers and equality before the law". The Commission's proposal for taking some measures shall be sent to the Council, which shall, acting by a qualified majority, adopt a legal act amending or rejecting the proposal. The Commission informs the European Parliament of any measures proposed or adopted.

With *its resolution of November 2018*(European Parliament, 2018a), the European Parliament reiterates its call on the European Commission, through another legal act issued in 2016, to monitor the Member States and the EU institutions and to establish an annual cycle of reporting and recommendations.

Following previous efforts to determine an appropriate legal framework on the rule of law, *in 2019* the Commission issued a *new Communication* (European Commission, 2019/163 final). This document changes, to a small extent, the definition of the rule of law enshrined in 2014, in another of its documents. This act presents, in its first part, the existing instruments related to the rule of law: article 7 TEU and the rule of law framework, infringement proceedings and preliminary rulings, other mechanisms and frameworks. Another part of the examined document refers to the evaluation of the experience on the matter so far. Thus, the following aspects are highlighted: the need to promote the rule of law's standards, recognising warning signs, deepening the specific knowledge concerning the Member State, improving EU's capacity to react to the rule of law issues, addressing shortcomings in the long term through structural reforms.At the same time, the Commission's 2019 Communication also determines possible avenues for the future, which address three issues: "a solid political and legal culture supporting the rule of law in every Member State"; prevention of a crisis concerning the violation of the rule of law by one or more og the Member States, through cooperation and support of the European Unionto strengthen the rule of law at national level; the Union's ability to act timely and effectively when the national mechanisms have failed through infringement proceedings and preliminary rulings.

A few months later, in *another Communication* (European Commission, 2019/343 final), the Commission proposes an action plan to reinforce the rule of law and maintains the key principles of this concept, which it enriches with an additional explanation; so, the *rule of law* covers how accountably laws are set, how fairly they are applied, and how effectively they work; it also covers institutional issues such as independent and impartial courts and the separation of powers.At the same time, reference is made to the case law of the Court of Justice on: the guarantees of independence and impartiality for judicial system the review by the Court of Justice of the organisation of justice in the Member States; systematic problems related to the rule of law with a specific impact in the area of Union finances. It also lists the actions that the Commission wants to take to strengthen the rule of law. In the same sense, the Commission intends to ensure "a place for the rule of law in public debate and educational

curricula"through an annual organization of an event on the rule of law concretized by a dialogue between civil society organisations and policy-makers at EU level. In promoting the standards of the rule of law, the Commission also aims to step up the cooperation with European networks, national judiciaries, national parliaments, the Council of Europe,theOrganisation for Security and Cooperation in Europe (OSCE), the Organisation for Economic Cooperation and Development (OECD), theUnited Nations, the World Bank. It was also proposed to create anetwork of national contact points in Member States.This document established an *Annual Rule of Law Report*, which would provide "a synthesis of significant developments in the Member States and at EU level, including the case law of the European Court of Justice, and other relevant information, such as relevant parts of the EU Justice Scoreboard and of the European Semester country reports". If Member States do not eliminate the breaches of the rule of law by internal mechanisms, the Commission will take them before the Court of Justice. Thus, the Commission can use the procedure determined by the Framework for strengthening the rule of law through its Communication of 2014 and the procedure enshrined in the article 7 of the Treaty on European Union.

Based on the regulations of this document examined above, the Commission issued, in a subsequent *Communication* (European Commission, 2020/580 final), *the first Annual Report on the Rule of Law in 2020*, in which the basic concept used has the same content as that provided by its Communication of April 2019. The report doesnotaddresstheelements of thedefinition of therule of law, but referstotheexamination of MemberStates, in the 27 chapters, in areas with a direct bearing on the respect for the rule of law:justice system, anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances. The latterquitevariedheterogeneousdomains are: „a transparent, accountable, democratic and pluralistic process for enacting laws, the separation of powers, the constitutional and the judicial control of laws, a transparent and high-quality public administration as well as effective independent authorities such as ombudsperson institutions or national human rights institutions".It shouldbenotedthatthisanalysislacks an assessment of humanrights. This report in a specific area is the result of the contribution of the European Union, the Member States, civil society and various professional associations and international organizations, as well as national and international civil society and journalists' organisations. The report analyzes the evolutions in the rule of law in the Member States and emphasizes that there are states that have developed good practices on the

rule of law. However, there are also situations in which there are real threats to the media freedom and pluralism, the independence of the judiciary, the checks and balances. The Rule of Law Report on 30 September 2020 will be followed by the renewed Strategy for the Implementation of the Charter of Fundamental Rights and the European Democracy Action Plan.

A monthlater, theEuropean Parliament has adopted *the resolution on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights*(European Parliament,2020a). In this act, The Union is very concerned about the rise of autocratic and illiberal tendencies, as well as corruption and disinformation in several Member States. It considers that it is facing a crisis of its founding values, a crisis caused by the fact that it does not have the necessary tools to counter the repeated violations of the rule of law. Therefore, *the Parliament proposes to create a mechanism* on democracy, the rule of law and fundamental rights to be governed by *an interinstitutional agreement between the three institutions* (Parliament, Council and Commission), consisting of an Annual Monitoring Cycle on Union values, covering all aspects of Article 2 provided for in the TEU. The Annual Monitoring Cycle must contain country-specific clear recommendations, with timelines and targets for implementation, to be followed up in subsequent annual or urgent reports. It shall replace the mechanism for cooperation and verification of progress in Romania and in Bulgaria. *This Interinstitutional Agreement* should "integrate existing instruments relating to the promotion of and respect for Union values, in particular the Commission's annual Rule of Law Report, the Council's annual Rule of Law Dialogue and the Commission's Rule of Law Framework, in order to avoid duplication". A Proposal for an Interinstitutional Agreement on Reinforcing Union Values is included in an annex to this resolution.

4. The conditionality mechanism on the rule of law in the European Union

A Regulation of the European Parliament and of the Council on a general conditionality regime for the protection of the Union budget (European Parliament, 2020b) was adopted in *December 2020*. This mechanism provided for in this Regulation complements the instruments aimed at defending the rule of law at EU level developed so far: the European Rule of Law Mechanism, the EU Justice Scoreboard, actions for failure to fulfill obligations, as well as the procedure provided for in the article 7 of the TEU. The method set out in this document is intended to protect the Union budget against breaches of the rule of law, which would affect its good financial management or the protection of the Union's financial interests. To achieve this goal, various

measures can be taken, such as: "the suspension of payments and of commitments, the suspension of the disbursement of instalments or the early repayment of loans, a reduction of funding under existing commitments, and a prohibition on entering into new commitments with recipients or to enter into new agreements on loans or other instruments guaranteed by the Union budget". Those measures must take account of the compliance with the principle of proportionality and the protection of the legitimate interests of the final recipients and beneficiaries. The decisions adopted under this Regulation and obligations towards final recipients or beneficiaries set out in this Regulation are part of applicable Union law with respect to implementing funding in shared management. The Regulation defines the rule of law by listing the principles underlying it, in a similar manner to that of previous Commission legal acts. In addition, the rule of law is understood to refer to the other values and principles of the Union enshrined in the article 2 of the TEU. Also, the elements that may constitute the indications of breaches of the principles of the rule of law are listed. The Regulation also provides for the procedure by which the measures set out above may be taken. First, if the Commission finds that a Member State has infringed a principle related to the rule of law, it sends a written notification to the Member State concerned, stating the specific reasons. The Member State concerned shall then provide the information requested, submit comments and propose measures to remedy the situation within a time limit set by the Commission. The latter shall perform an elaborate and qualitative evaluation, based on significant information from the institutions and bodies of the European Union and other relevant international organizations. If the European Executive has found that the measures taken are not adequate, it shall submit a proposal for an implementing decision on the appropriate measures to the Council within one month of receiving the Member State's observations. The Commission's proposal may also refer to the lifting of measures taken in respect to a Member State where the latter has taken appropriate measures to remedy a situation which determines the application of a sanction. The Commission shall inform the European Parliament of all measures taken. The regulation also requires the Commission to submit a report until 12 January 2024 to the European Parliament and the Council on the application of this legal act.

The European Parliament Resolution of March 2021 implementing the Regulation of December 2020 (European Parliament, 2021a) emphasizes that "the Rule of Law Conditionality Regulation has entered into force and is binding in its entirety for all commitment appropriations and payment appropriations in all Member States and for the EU institutions". This

normative act emphasized its direct applicability since 1 January 2021.In order to protect the Union budget, the Commission shall order all the necessary measures.

5. The persistent violations of the rule of law in Poland and Hungary and the application of the conditionality mechanism

We further present the situation of Poland and Hungary relating to the serious and persistent violations of the rule of law, as well as their condemnation by distinct judgments of the Court of Justice in Luxembourg.

The procedure which is determined by the existence of a clear risk of violation of the provisions of article 7 paragraph 1 TEU was launched in two situations: in December 2017, by the Commission in respect of Poland (European Commission, 2017b) and in September 2018, by the European Parliament in respect of Hungary (European Parliament, 2017c). As noted in the legal literature, the implementation of Article 7 requires a mixture of legal and political dynamics (Wouters, 2021).

As emphasized in the doctrine (Hillion, 2016), "controversial changes in the laws of Poland and Hungary have deepened concerns about the disregard for the rule of law in the European Union. The member States have endowed the Union with a legal mandate to ensure respect for the rule of law. Also, the EU has various means at its disposal to fulfil such mandate, which in many ways remain to be used".

Regarding Poland, based on the document adopted in 2014 by the Commission (European Commission, 2014), the latter sent a letter to the Polish government in December 2015 requesting that the Parliament (Seim) do not vote the law on the Constitutional Tribunal until it receives the opinion of the Venice Commission in this regard. The aforementioned law contained many ambiguities that could have adverse effects on the independence and functioning of the Constitutional Tribunal. Poland did not take into account this recommendation of the European executive and adopted the legal act mentioned above.The latter was declared unconstitutional by a Tribunal decision, which the Government did not publish in the Official Journal. Moreover, in its opinion (Venice Commission, 2015), the Venice Commission established that, with the new amendments to the law on the Constitutional Tribunal of December 2015, the latter cannot exercise its powers.Following a decision from March 2016, the Constitutional Tribunal resumed the adjudication of cases, but the government refused to publish in the Official Journal its decisions handed down after this date. In the same sense, the Polish parliament adopted the law on the management and supervisory boards of the Polish public

television broadcaster and public radio broadcaster; although the Commission had expressed its concern about the mass media reform, the Polish government specified that the new legislative framework in the field does not affect media pluralism, point of view refuted by the existing reality.

As a result of this situation, through a recommendation from July 2016, (European Commission, 2016a), the Commission has stated: "the lack of implementation of the judgments of the Constitutional Tribunal of 3 and 9 December 2015; the lack of publication in the Official Journal and of implementation of the judgment of 9 March 2016 and of the judgments pronounced by the Constitutional Tribunal since 9 March 2016; the lack of the efficiency of the control of the constitutionality of the new legislation after the adoption of a new Court law by the parliament in July 2016 and the rule of law". The European executive also expressed many concerns regarding other laws adopted by the Seim (a media law, a new Civil Service Act, a law amending the law on the Police and certain other laws, the laws on the Public Prosecution Office and a new law on the Ombudsman). Through the analysis of the latters, it was concluded that they represent serious violations of the principles regarding the rule of law, enshrined in the legal documents of the Commission, analyzed in detail in the first part of the paper. Therefore, certain measures and a deadline of 3 months to remedy the situation were recommended in this regard. Although some provisions of the Law on the Constitutional Tribunal adopted by the parliament in July 2016 were declared unconstitutional by a decision of the constitutional court in August 2016, the latter was not considered valid by the government, which did not publish it either and nor other subsequent decisions of the Tribunal in the Official Journal. More than that, in August 2016, the Polish Prosecutor's Service initiated a criminal investigation against the President of the Constitutional Court, because he did not agree to three judges illegally appointed by the new government in December 2015 taking up their duties.

Through a resolution from September 2016 (European Parliament, 2016a), the European Parliament calls on Poland to implement the Commission's recommendations in order to resolve the existing constitutional crisis.

In its opinion of October 2016 (Venice Commission, 2016), the Venice Commission emphasized that the Law on the Constitutional Court of July 2016 brings some improvements compared to the previous law in the field; however, this normative act contains provisions that "can considerably affect the Court's activity and undermine its independence through an excessive legislative and executive control over its functioning".

At the same time, the Polish government formulated a response to the Commission's latest recommendation, whose point of view it disputes and did not undertake to order any of the measures suggested by the European executive.

On 31 October 2016, the UN Human Rights Committee adopted its concluding observations on Poland's seventh periodic report (UN Human Rights Committee, 2016), which highlights the same negative aspects analyzed by the Commission in its recommendations.

In December 2016, the Polish Parliament adopted two laws on the Constitutional Tribunal (Law on the status of judges, Law on organization and proceedings), followed by their Implementing law.

Through another recommendation from December 2016(European Commission, 2017a), the Commission found that the Law of 22 July 2016 on the Constitutional Court is contrary to its decisions of 3 and 9 December 2015. It also suggested to the Polish authorities to publish and implement the decision of the Constitutional Tribunal of 9 March 2016 and its subsequent decisions.

The European executive emphasized, once again, the negative impact of all the activities of the legislature and the executive, found in a previous recommendation and which were exposed above. The Commission also noted that the Law on the organization and conduct of procedures complies with some of its recommendations. The European Executive pointed out, however, that the three laws on the Constitutional Tribunal mentioned above contain provisions that aggravate the concerns expressed by the Commission in another previous act relating to the situation of judges, to the appointment of the President, the Vice-President and the acting President of the Tribunal. In the same sense, the three mentioned normative acts entered into force the day after their publication, fact that did not allow the Polish Constitutional Tribunal to exercise a previous control over them, situation which is contrary to the recommendation formulated by the Venice Commission in its opinion of March 2016.Consequently, the Commission considers that the situation of a systemic threat to the rule of law in Poland is maintained. It recommends that, within 3 months of receiving this legal act, Poland should dispose a series of measures to remedy the existing situation, which it should communicate to the European executive.

The Polish government, through its response, disputes all the problems identified in the recommendation and does not consider ordering new measures to eliminate the state of affairs created through its actions.

In a new recommendation from July 2017 (European Commission, 2017c),the Commission highlighted the adoption of new laws regarding the Polish judicial system (the law on the National School of Judiciary, the law on the National Council for the Judiciary, the law on the Ordinary Courts Organization and the law on the Supreme Court), which contain provisions that cause fundamental concerns about the independence of the judicial system and the separation of powers in the state. In the same sense, the lack of an independent and legitimate control of the constitutionality of the above-mentioned laws was also emphasized. Moreover, the Commission noted that these laws do not comply with common European standards on guaranteeing the independence of the judicial system. The Commission also explained in detail that none of the measures proposed by it in its previous acts were applied. The independence and legitimacy of the Constitutional Tribunal were seriously undermined through a series of actions, such as: the violation of the constitutional provisions regarding the selection procedure of the president and vice-president of the Tribunal; the modification by the new president of the Tribunal of the court panels and the reassignment of cases to panels made up, in part, of illegally appointed judges, who pronounced a large number of judgments; the rejecting the requests of the People's Advocate to remove illegally appointed judges from the court panels; the appointment of an illegally appointed judge as Vice-President of the Tribunal.

In addition to the measures suggested in other of its previous recommendations, the Brussels executive also established others, such as: measures to reestablish the independence and the legitimacy of the Constitutional Tribunal; the abstaining from any measure affecting the immovability of Supreme Court judges; the compliance of any justice reform with the rule of law, European Union legislation and European standards regarding the independence of the judicial system; the refraining from making statements, which would further affect the entire judicial system; the effective application of the principle of loyal cooperation between state institutions, to resolve the existing situation. The Commission has also decided to launch infringement proceedings against Poland after the Law on the Organization of Ordinary Courts and the Law on the Supreme Court will have legal effects, as they also breach European Union law.

By its resolution from November 2017 (European Parliament, 2017b), the European Parliament supported the Commission's recommendations and emphasized that the current situation in Poland represents a clear risk of a serious violation of the values mentioned in the article 2 of the TEU.

Although through two opinions of December 8, 2017 (Venice Commission, 2017a, 2017b), the Venice Commission specified that the draft laws on the Polish judicial system, as well as the law on the Prosecutor's Office, seriously threaten the Polish judicial system, these normative acts were adopted by the Seim on the same day.

The Commission adopted the fourth recommendation on Poland in December 2017 (European Commission, 2018a), whereby it takes the same view as the Venice Commission on the aforementioned laws adopted by the Polish parliament (The law on the National Council for the Judiciary, the law on the Supreme Court, the law on the National School of Judiciary and the law on the Ordinary Courts Organization). Following a detailed analysis, it considered that the situation of systemic threats to the rule of law in Poland has significantly worsened and recommended that this situation be remedied by taking appropriate measures within three months of receiving this act. The European Executive noted that the measures suggested in its previous recommendation had not been taken and reiterated their implementation.

Following what was exposed above, the first occasion in which the Framework for strengthening the rule of law was used have been materialized in a discussion with Poland from January 2016 to December 2017. The Commission adopted one opinion (European Commission, 2016b) and four recommendations. The dialogue helped to identify the problems, but did not solve the deficiencies identified, reffering to the rule of law; as a result, the Commission launched the procedure provided for in thearticle 7 paragraph 1 of TEU, in December 2017. Consequently, at the same time, as the recommendation set out above and based on the arguments presented in detail, the Commission addressed a proposal to the Council(European Commission, 2017b) for adopting a decision, by which it determines a clear risk of a serious breach by the Republic of Poland of the rule of law.

In the CaseC-619/18 R (Court of Justice of the European Union, 2019), in line with its July 2017 recommendation, the Commission initiated an action against the Republic of Poland under the article 258 TFEU for failure to fulfill its obligations and it foundan infringement of the second paragraph of the article 19 from the TEU and the article 47 of the Charter of Fundamental Rights of the European Union. Two reasons invoked by the European executive were accepted by the Court. First, the action took into account the fact that the national measures to reduce there tirementage of judges of the Supreme Court of Poland who were appointed to that court before 3 April 2018 violate the principle of irremovability of judges. The Court held that the application of this measure is not justified by a legitimate

objective. In the second place, the national provisions giving the President of the Republic the right to extend the active judicial office of judges of the Supreme Court at the time of reaching the low retirementage infringe the principle of the independence of the judiciary. The head of state's decision is discretionary, as it does not have to be motivated and it cannot bech allenged through a judicial appeal. Also, at therequest of the Commission, byorder of the Vice-President of the Court of Justice, the latter admitted the temporary measure for suspending the application of certain provisions of the new Law on the Supreme Court of Poland, which would have affected the independence of the judiciary.

By its action brought on 11 March 2021, Poland claimed that the Court should cancel the Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget in its entirety. It has also asked the Court to order the European Parliament and the Council to pay the costs.It invoked, in this regard, the lack of an adequate legal basis, the violation of principles, such as: the principle of attribution, the principles of legal certainty, proportionality and equality of the Member States in relation to existing treaties. It also bases its action on the avoidance of the procedure enshrined in the article 7 paragraph 3 of TEU and on the exceeding the powers of the Union. The Court rejected the action, as unfounded by a decision pronounced in 2022 (Court of Justice of the European Union, 2022b).

In 15 July 2021, the Court of Justice ruled in its judgment, in the Case C-791/19 (Court of Justice of the European Union, 2021b) that the new disciplinary regim econcerning judges of the Supreme Court and judges of the ordinary courts in Poland adopted in 2017 is not compatible with EU law. As a result, a new chamber, the Disciplinary Chamber, was created within the Supreme Court and it was charged with resolving disciplinary cases of judges relating to judges of the Supreme Court and, on appeal, those referring to judges of the ordinary courts. Considering the special context in which the Disciplinary Chamber was established and its characteristics, it does not provide all the guarantees of impartiality and independence.

In September 2021, the Commission stated to send Poland a letter of formal notice under Article 260 (2) TFEU, because it did not order the necessary measures to respect the previously commented decision. On the same date, the Commission requested the CJEU to impose financials anctions on Poland to ensure compliance with the Court's order on temporary measures of 14 July 2021 relating to the functioning of the

Disciplinary Chamber of the Polish Supreme Court and the suspension of other provisions of Polish law affecting the independence of the judiciary.

In its *Resolution of 16 September 2021* (European Parliament, 2021b), the European legislative makes assessments regarding: media freedom; the supremacy of EU law and the independence of the judiciary and other institutions, the further violation of the rule of law in Poland; the condemning the mass media campaigns of those who criticize the current government. The Parliament found the violation by Poland, in a deliberate and systematic way, of all the court's decisions. Therefore, it requests the Commission to launch the procedure indicated by the article 6(1) of the Regulation on the conditionality of the rule of law for Poland.

On October 14, 2021, the Committee on Legal Affairs of the European Parliament voted to bring an action before the Court of Justice against the Commission over its failure to act to trigger the EU's rule of law conditionality mechanism.

Through its European Parliament resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law (European Parliament, 2021c), the European legislative emphasized that on 7 October 2021 the illegitimate 'Constitutional Tribunal' pronounced its decision in the case K 3/21 on the request initiated by the Polish Prime Minister on 29 March 2021, finding the provisions of the TEU incompatible with the Polish Constitution on multiple reasons. The Parliament expresses its concern as this decision, published in the Poland's official gazette, will discourage judges from using their powers regarding the application of European Union law. Hence, the European legislature underlines the fact that the European treaties cannot be modified by a decision of a national court. Il also explains that the article 91 of the Polish Constitution enshrines the priority of application of European Union law over national law in case of conflict between the two legal systems. Additionally, the Parliament proposes multiple measures to the Commission and the Council, such as: "launching infringement procedures in relation to the legislation on the illegitimate 'Constitutional Tribunal', its unlawful composition and its role in preventing compliance with the judgments of the CJEU; triggering the procedure provided for in Article 6(1) of the Rule of Law Conditionality Regulation for Poland, on the part of the Commission; refraining from approving the draft recovery and resilience plan of Poland until the Government of Poland implements the judgments of the CJEU and international courts".

*Refferingto Hungary,*in May 2017, The European Parliamentvoted a resolution (European Parliament, 2017a), concluding that the events in Hungary in the last few years have caused a serious deterioration of the rule

of law, democracy and fundamental rights. It also stated that the functioning of the constitutional system, the independence of the judiciary and of other institutions and many worrying allegations of corruption and conflicts of interest, could represent an emerging systemic threat to the rule of law in this state. The European legislature proposed a number of relevant measures, such as: the engaging in a dialogue with the Commission regarding all the issues raised; the Commission's monitoring of the use of European funds by Hungary, in order to fully comply with EU legislation; the annulation by Hungary of a certain acts related to increasing the strictness of procedures carried out in the areas of border management and asylum and the act amending the National Higher Education Act; the retreating of the proposed Act on the Transparency of Organizations Receiving Support from Abroad. Therefore, it argued that the existing situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 of the TEU, that determines the launch of the Article 7(1) TEU procedure.

In the Sargentini Report (European Parliament, 2018b), the European Parliament found that the facts and the attitudes of the Hungarian government presented in the annex to this document constitute a clear risk of a serious violation of the values provided by of the article 2 TEU. He invites the Commission to establish this state of fact, based on Article 7 paragraph 1 of the Treaty on European Union. The European legislature expresses serious concerns regarding the following aspects: "the functioning of the constitutional and electoral system; the independence of the judiciary and of other institutions and the rights of judges; the corruption and the conflicts of interest; the privacy and the data protection; the freedom of expression; the academic freedom; the freedom of religion; the freedom of association; the right to equal treatment; the rights of persons belonging to minorities; the fundamental rights of migrants, asylum seekers and refugees; the economic and social rights".

In *September 2018*, the European Parliament adopted an other *resolution* calling on the Council of the European Union toestablish a clearrisk of a serious breach of thevalues on whichthe Union is founded by Hungary (European Parliament, 2018b). In this regard, the European legislature was worried about the same important issues of the Sargentini Report, previously listed.

The above-mentioned resolution was contested at the Court of Justiceby Hungary, which asked the European Court to an nul this legal act and order the European Parliament to pay the costs. Hungary argued that this resolution violated a number of principles, such as: the principles of

democracy and equal treatment, principles of sincere cooperation, cooperation in good faith between the institutions, respect for legitimate expectations and legal certainty. By a decision issued in June 2021(Court of Justice of the European Union, 2021a), the Court rejected all the pleas in law relied on and ordered Hungary to bear its own costs and to pay those incurred by the European Parliament.

With similar reasons used by Poland, that have been cited above, Hungary requested, by an action brought before the Court of Justice in 2021, the annulation of the resolutionaccording to which the funding from the Union budget depends on the observance of the rule of law by the Member States. The latter has been defined by several legal acts of the Union, mentioned during the paper. This mechanism, adopted on the basis of the appropriate legislation, is compatible with the procedure provided in the article 7 TEU, respects the limits of the powers conferred on the Union and the principle of legal certainty. The Union must be able, according to the powers granted to it, to defend the values promoted in the Treaties. The Union budget is one of the instruments that make it possible to enshrine in the Union's policies and actions the fundamental principle of solidarity between Member States. The implementation of this principle, through this budget, is based on the mutual trust they have in responsible use of the common resources included in that budget. The sound financial management of the Union budget and the financial interests of the Union can be seriously compromised by the violations of the rule of law by a Member State. Such infringements may result, inter alia, in the absence of a guarantee that the expenses covered by the Union budget fulfills all the financing conditions laid down by Union law and is therefore in line with the objectives pursued by the Union when financing such expenses. The Court dismissed the action by a decision of February 2022(Court of Justice of the European Union, 2022a) and ordered the payment the costs.

In April 2022, the Commission sent a notification letter to Hungary, by which it activated the budget conditionality procedure for the first time.

In August and September 2022, Hungary sent two letters, indicating some remedies to the existing situation. In the Commission's view, these letters do not remove the risk that exists on the European budget; as a result, in September 2022, the European executive adopted a legal act (COM (2022) 485 final), proposing the following measures to the Council: “a suspension of 65% of the commitments for three operational programmes under cohesion policy; a prohibition to enter into legal commitments with the public interest trusts for programmes implemented in direct and indirect

management". The Council has one month or, in exceptional circumstances, two months to draft a normative act regarding this situation.

6. Conclusions

The new legal framework on the rule of law was necessary, on the one hand, due to the particular importance and complexity of the notion of the rule of law, a fundamental value defended by the European Union. On the other hand, the adoption of legal acts in this area was required, because the events that took place in some Member States seriously affected the content of the concept analyzed in the paper.

The responsibility of the respect of the rule of law belongs to each state because the existence of a true democracy depends on the fair application of this principle. Therefore, the requirements of this concept are enshrined, in a general or more detailed manner, in the constitutions adopted at national level.

The situations of systematic infringement of the rule of law by the Member States have triggered their trial by the Court of Justice and the pronunciation of some judgments in this respect.

The avoidance of such circumstances could be achieved by the elaboration of a normative act by the Council together with the European Parliament, proposing the development and implementation of the adequate action plans in this field by the Member States, as well as the application of appropriate sanctions in case of finding significant deficiencies.

Also, the creation of a body at national level, which provides the Commission the necessary information on the progress of each state in this regard and which monitors concrete compliance of European standards imposed in this area, has been of real use. We consider that the activity of this institution should be clearly regulated to better achieve its purpose.

In the same sense, we believe that a much more effective interinstitutional dialogue at both national and Union level would make possible to take the preventive measures, as well as the concrete measures to remedy the situations where the values expressed by the rule of law have been violated.

It is also very effective to disseminate the significant case law of the Luxembourg Court of Justice in the Member States, so that they may know it and thus avoid infringing it in the area examined in the paper.

For an increased efficiency of the article 7 of the TUE, we propose the provision, in its content, of some relevant sanctions, as well as the identification of the rights of the Member States at fault, which could be

suspended in case of the violation of one of the values protected by the article 2 of the TEU.

The implementation of the principle under review has a key role to play in the proper functioning of the European Union. Therefore, we consider very important the existence of these appropriate mechanisms for systematic control and monitoring of the Member States of the European Union.

The judgments of the Court of Justice in this area are binding and therefore these are an alarm signal for the special significance that the Union attaches to the rule of law, an essential value consecrated in its legislation.

Although the Court of Justice has condemned countries such as Poland and Hungary, for violating the principles of the rule of law consecrated by the European Union, the states concerned have not taken the necessary measures and they continued this behavior, despite the sanctions applied.

As previously presented, the Commission triggered, for the first time, the conditionality mechanism provided in the Article 6 of Regulation 2020/2092and, following the exchange of letters with Hungary, it proposed to the Council severe measures related to the funds allocated to this state.

This article includes only some approaches to the complex issue, which concerns the systematic violations of the values ensuring the protection of the rule of law at the European Union level. Therefore, the study will continue with further analyzes of the subject under discussion.

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