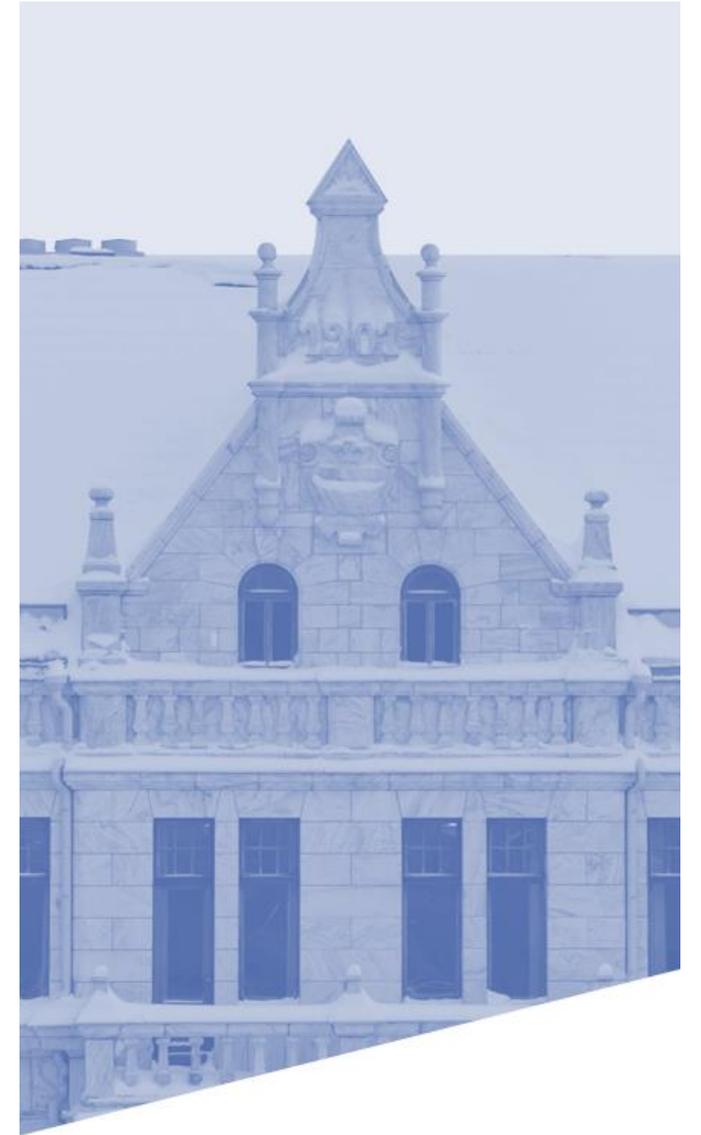


Rule of Law in the European Union

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8th Annual Lecture, Turku Law School, 14.10.2019



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Have I got news for you ?



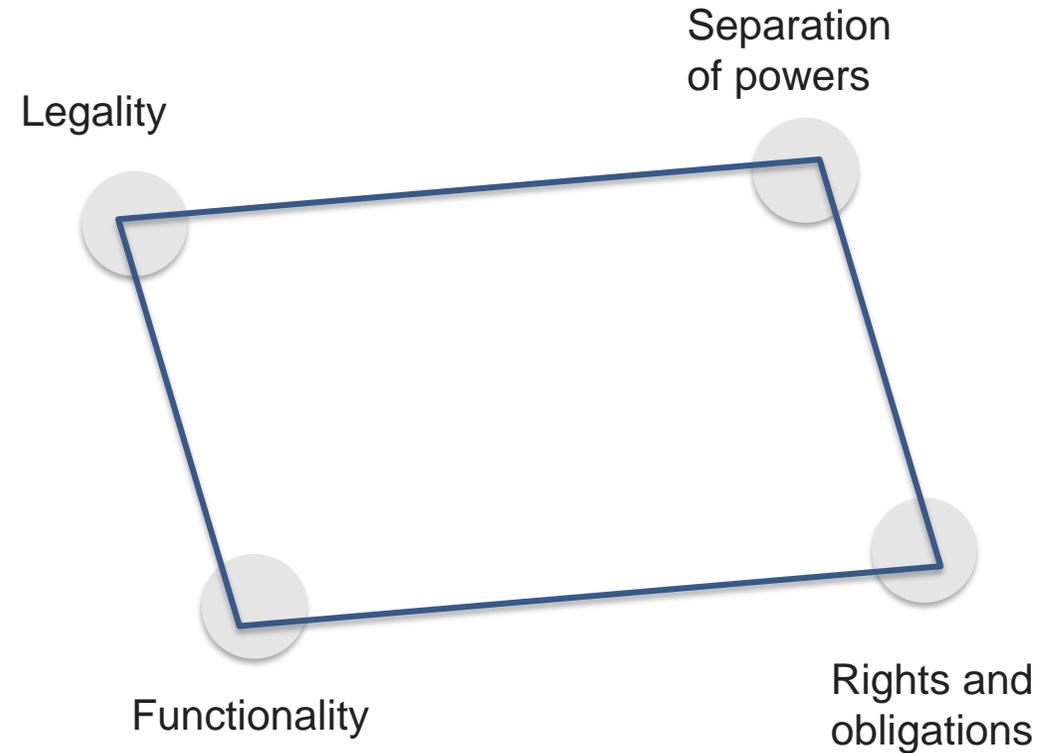
Venice Commission checklist

- The core elements of the rule of law
- 1) legality, including a transparent accountable and democratic process for enacting law,
- 2) legal certainty;
- 3) prohibition of arbitrariness;
- 4) access to justice before independent and impartial courts including judicial review of administrative acts;
- 5) respect for human rights; and
- 6) non-discrimination and equality before the law



The four corners are:

- the principle of legality
- the balanced separation of powers
- the fundamental and human rights
- the functionality of "the rule of law house"



**Rule of law on the basis of four variables - "A house built on solid ground"
(Pekka Hallberg)**

The common values of the EU (EUT Art. 2)

- The Union is founded on the values of
 - respect for human dignity,
 - freedom,
 - democracy,
 - equality,
 - the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.



C-286/12, Commission v Hungary

- European Commission sought a declaration that, by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 – which gives rise to a difference in treatment on grounds of age which is not justified by legitimate objectives and which, in any event, is not appropriate or necessary as regards the objectives pursued – Hungary has failed to fulfil its obligations under Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. Under the previous law the age limit was 70.
- The Court: the contested national provisions give rise to a difference in treatment which does not comply with the principle of proportionality → the Commission's action must be upheld.



C-619/18, Commission v Poland (Grand Chamber)

- Two complaints alleging infringement of the obligations under the combined provisions of Article 19(1) TEU and Article 47 of the Charter.
- 1) the Commission alleges that Poland failed to comply with those obligations inasmuch as the New Law on the Supreme Court is in breach of the principle of judicial independence and, in particular, of the principle of the irremovability of judges, provided that the measure lowering the retirement age of judges of the Supreme Court was to apply to judges in post who were appointed to that court before 3 April 2018, the date on which that Law entered into force.
- 2) the Commission alleges that Poland failed to comply with those obligations by granting under that Law to the President of the Republic, in breach of the principle of judicial independence, the discretion to extend, twice, each time for a 3-year term, the period of judicial activity of judges of the Supreme Court beyond the newly fixed retirement age.



C-619/18, Commission v Poland (Grand Chamber), ctd

- The Court: by providing that the measure consisting in lowering the retirement age of the judges of the Supreme Court is to apply to judges in post who were appointed to that court before entering into force of the new legislation and by granting the President of the Republic the discretion to extend the period of judicial activity of judges of that court beyond the newly fixed retirement age, Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.



ECHR: Baka v Hungary (Grand Chamber, 23.6.2016)

- Hungary violated Articles 6(1) and 10 of the Convention by a premature termination of the Supreme Court president's term.
- The premature termination of the applicant's mandate as President of the Supreme Court was not reviewed, nor was it open to review, by an ordinary tribunal or other body exercising judicial powers. This lack of judicial review was the result of legislation whose compatibility with the requirements of the rule of law is doubtful.
- The applicant complained that his mandate as President of the Supreme Court had been terminated as a result of the views he had expressed publicly in his capacity as President of the Supreme Court and the National Council of Justice, concerning legislative reforms affecting the judiciary.



ECHR: Baka v Hungary (Grand Chamber, 23.6.2016) ctd

- Mr Baka expressed his views and criticisms on constitutional and legislative reforms affecting the judiciary, on issues related to the functioning and reform of the judicial system, the independence and irremovability of judges and the lowering of the retirement age for judges, all of which are questions of public interest.
- His statements did not go beyond mere criticism from a strictly professional perspective. His position and statements, which clearly fell within the context of a debate on matters of great public interest, called for a high degree of protection for his freedom of expression and strict scrutiny of any interference, with a correspondingly narrow margin of appreciation being afforded to the authorities of the respondent State
- The premature termination of the applicant's mandate undoubtedly had a "chilling effect": discouraged not only him but also other judges and court presidents in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary.



Guðmundur Andri Ástráðsson v. Iceland (12.3.2019, referred to the grand chamber)

- Iceland violated Article 6(1) of the Convention as regards the right to a tribunal established by law
- The process by which A.E. was appointed a judge of the newly established Court of Appeal, taking account of the nature of the procedural violations of domestic law as confirmed by the Supreme Court of Iceland, amounted to a flagrant breach of the applicable rules
- The process was one in which the executive branch exerted undue discretion, not envisaged by the legislation in force, on the choice of four judges to the new Court of Appeal, coupled with Parliament failing to adhere to the legislative scheme previously enacted to secure an adequate balance between the executive and legislative branches in the appointment process.
- The Minister of Justice acted in manifest disregard of the applicable rules in deciding to replace four of the fifteen candidates, considered among the most qualified by the Evaluation Committee, by other four applicants, assessed less qualified. The process was therefore to the detriment of the confidence that the judiciary in a democratic society must inspire in the public and contravened the very essence of the principle that a tribunal must be established by law, one of the fundamental principles of the rule of law.



Main features of political systems (professor Sverker Gustafsson)

- Democracy is a system with majority governance AND political liberalism.
- Populism is a system with majority governance WITHOUT political liberalism
- Dictatorship is a system WITHOUT majority governance AND political liberalism



Why is rule of law so important?

- Key word: trust
 - Citizens can rely on that also decision-makers are accountable.
 - Businesses can count on that conditions for entrepreneurship are stable and predictable, internal market.
 - In societies where the rule of law prevails, people are happier and more prosperous.
 - Mutual trust is also an essential principle between EU Member States.
- Human rights and minority rights respected irrespective of a parliamentary majority to run counter of these obligations.
- Free media is a guarantee that people can make their choices in the elections based on reliable, pluralistic information.
- Illiberal democracy is not the model the EU is based on → the member states joined the Union knowing the obligations of the TEU.
- The value basis provided in the EU Treaty must not be undermined or questioned: rule of law is not a matter of opinion.
- If the rule of law is not respected, the member states, the Commission and the EU Court of Justice must stand up and defend it

