

THE EUROPEAN UNION DISTINCTIVENESS: A CONCEPT OF THE RULE OF LAW

^{1*}Adnan Mahmutovic, ²Helza Nova Lita

¹College of Business and Law, Dar Al Hekma University, Kingdom of Saudi Arabia,
Amahmutovic@dah.edu.sa

²Faculty of Law, Universitas Padjadjaran, helza.nova@unpad.ac.id

Abstract

This paper discusses the distinctiveness of the European Union with focus on the Rule of Law and its importance for the EU integration process. Rule of Law is a notion that is very frequently used, but at the same time quite controversial as it is not so easy always to reach generally accepted meaning. Therefore, this paper provides a analysis of the EU Rule of Law as multidimensional legal principle gravitating between values and principles. The paper acknowledges that a concept of the EU rule of law can be the subject of diverse interpretations and implementation. High-ranking government officials of a two EU member states, Poland and Hungary, have argued recently that a concept of the EU rule of law lacks well-defined rules and remains the subject of much debate. Therefore, the paper provides for better understanding of the concept itself within the specific supranational legal environment. Also, the paper argues that the future of the EU and its integrations depends largely on the respect of the rule of law that remains to be a core and the element of unity within Europe's legal space. The relationship between the principles and values upon which the EU is founded remain close and interrelated. The EU Rule of law with all its distinctiveness can be concluded with certainty that it reflects a specific character and nature of the EU legal system.

Keywords: *Rule of Law; European Union; Fundamental Value; Principle; Distinctiveness; Supranational; Case Law*

1. Introduction

European Union is the best to be described as a specific, sui generis structure¹. The specific structure, in general, can be attributed to the existence of a dualistic visionary concept of European integrations. From the beginning, the EU was developing itself with two opposing tendencies inside the core of European integrations: the dynamics which lead to the creation of supranational institutions on one hand, and the cooperation between states based on an intergovernmental model, on the other hand. Frequently, the modalities used in European treaties, that is, the modalities of constitutional-legal relevance, were a product of a compromise between the two tendencies and this was the reason, inter alia, for a gradual creation of the sui generis legal structure.

The consequent distinctiveness of the European Union legislation can be noticed in judgments of the ECJ in which the EU is defined as an autonomous legal system², but a legal

¹ William Phelan, "Analytical Essays: Evaluation, Synthesis, Reflection," *International Studies Review* 14, no. 3 (2012): 367–85.

² Judgment of the Court of 5 February 1963. *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*. Case 26-62. (1963).

system also characterized by a certain degree of uniqueness. The uniqueness of the European Union legislation is further expressed by its equal legitimacy on the territories of Member States who practice Common Law tradition and on the territories of Member States who belong to the Civil Law family.

Some authors argue that from *van Gend en Loos* the autonomy of EU law is governed by two opposite dynamics³. The one seeking to define what EU law is not, i.e. it is not ordinary international law, and the other defines what EU law is, i.e. an autonomous legal order that has the capacity to operate as a self-sufficient system of norms with more power than traditional treaties. Our understanding is that the autonomy of EU legal system equally derives from the fact that it originated by application of a formula typically used for creation of a classical international law, however, its effects are closer to the domestic law than to the effects of a classical international law. This suggests that for the applicability of the legal rules of the European Union legal system it is not necessary to have in place domestic constitutional norms, which explicitly allow their application, the application is warranted by the very membership of the Member State to the European Union.

However, this paper mostly focuses on one more distinctiveness with particular significance. It is the distinctiveness of its rule of law concept. This paper, thus, discusses the key aspects describing the meaning and scope of a concept of the EU rule of law. In the focus of this paper are questions such as whether and to what extent supranational understandings of the rule of law are distinctive from the national understandings. The paper argues, thus, that the future of EU and its integrations depends largely on the respect of the rule of law that remains to be both a core value and a basic aspiration.⁴ This is largely due to the fact of the EU distinctiveness as a complex supranational project whose sustainability heavily depends on the member state's compliance with its fundamental values and principles of which the rule of law is definitely a constitutive element.⁵ Reports of the Commission have recorded the issue of the erosion of the EU rule of law in Hungary and Poland⁶ which corresponds with the statements

³ Koen Lenaerts, "The Autonomy of European Union Law," *AISDUE*, 2019, <https://www.aisdue.eu/koen-lenaerts-the-autonomy-of-european-union-law/>.

⁴ Adnan Mahmutovic, "Erosion of the Rule of Law in the European Union," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 1–12.

⁵ *Ibid.*

⁶ *Ibid.*

made by Hungary's Minister of Justice⁷ and his Poland's colleagues, Minister of Foreign Affairs,⁸ that the EU rule of law concept 'lacks well-defined rules and remains the subject of much debate.'⁹ Having said that, this paper should be seen as a work in progress, an attempt, to clarify on the scope and the meaning of the EU rule of law concept. It does not intend to take on the rule of law arguments related to the hypothetical question as to which member state would be next to follow the example of the UK or how it would precisely affect the future of the EU. Uniform acceptance of the meaning, operation and enforcement of the rule of law in the EU by its Member States is critical to the Union's legitimacy.¹⁰ Quite contrary, the paper admits only that the EU is a democratic society and democratic society subscribes to the rule of law¹¹, with the well-established view of the Commission holding that democracy, rule of law, and human rights were interrelated.¹²

2. Results and Discussion

2.1. Rule of Law Throughout the History of the EU

Historically, the European Union was not created by military power or political pressure, although there were clear attempts for forced European unification recorded in the long history of European integrations. EU owes its existence to a constitutive legal act, and continues to live in accordance with rules of law where its institutions are subject to judicial review¹³. EU was created and progressively developed through an evolutive process of a kind and in a peaceful manner where the point of origin was the concept of "integration through the rule of law"¹⁴. The

⁷ Judit Varga, "Judit Varga: Facts You Always Wanted to Know about Rule of Law but Never Dared to Ask | View," *Euronews*, 2019, <https://www.euronews.com/2019/11/19/judit-varga-facts-you-always-wanted-to-know-about-rule-of-law-hungary-view>.

⁸ David Parra Gómez, "Crisis of the Rule of Law in Europe: The Cases of Hungary, Poland and Spain," *Athens Journal of Law* 7, no. 3 (2021): 379–98.

⁹ David Sedlecký, "Były Szef MSZ Komentuje List Jourovej. 'Konia z Rzędem, Kto Znajdzie w Traktatach UE Definicję Praworządności,'" *Niezależna*, 2019, <https://niezalezna.pl/303625-byly-szef-msz-komentuje-list-jourovej-konia-z-rzedem-kto-znajdzie-w-traktatach-ue-definicje-praworzadnosci>.

¹⁰ Melanie Smith, "Staring into the Abyss: A Crisis of the Rule of Law in the EU," *European Law Journal* 25, no. 6 (2019): 561–76.

¹¹ European Court Of Human Rights, Case Of Winterwerp V. The Netherlands (Application no. 6301/73) 24 October 1979 (1979); European Court of Human Rights, Case of Vereniging Weekblad Bluf! V. The Netherlands: (44/1993/439/518) 9 February 1995 (1995).

¹² Ronald Janse, "Is the European Commission a Credible Guardian of the Values? A Revisionist Account of the Copenhagen Political Criteria during the Big Bang Enlargement?," *International Journal of Constitutional Law* 17, no. 1 (2019): 43–65, <https://academic.oup.com/icon/article/17/1/43/5485948>.

¹³ Thomas von Danwitz, "The Rule of Law in the Recent Jurisprudence of the ECJ," *Fordham International Law Journal* 37, no. 5 (2014): 1312–13, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2355&context=ilj>.

¹⁴ Koen Lenaerts, "New Horizons for the Rule of Law Within the EU," *German Law Journal* 21, no. 1 (2020): 29–34, <https://www.cambridge.org/core/journals/german-law-journal/article/new-horizons-for-the-rule-of-law->

Rule of Law in the beginning was taken as a common value or inheritance that originated from the constitutional traditions of their Member States (“Rechtsstaat” in German language, “État de droit” in French, “Stato di diritto” in Italian, “Estado de derecho” in Spanish), principally the Western European countries where the idea of European unification was born. Having absolved the catastrophic consequences of the WWII and especially after the end of the Cold War tendencies, the principles of the Rule of Law grew more popular¹⁵ and was generally perceived as a “good thing”¹⁶, although there were other considerations that revealed its dark side¹⁷.

Another perspective reveals that the European Union was not created to be a community exclusively based on geopolitical interests and the economic concerns of its Member States, but primarily to be a “Community founded on values shared by all Member States”¹⁸. Officially adopting the ethos of laws and freedoms, European Union demonstrated that its *raison d’être*, besides the economic integration, stands firmly on the values and fundamental rights and freedoms. From the very beginning of the European integration process, the democracy, human rights and the rule of law were recognized as important principles on which the European integration process must be founded. Historical retrospective revealed that after the global triumph of the Western democratic and liberal model and the concept of “good society”, European countries reached an agreement to give more attention to the promotion of human rights, democracy and the rule of law as the three fundamental principles for a “new Europe” to be founded upon. Today, almost 70 years after the evolution, we can conclude that the rule of law in the EU has travelled a long distance from a symbolic idea to a fundamental principle and constitutional value which is found at the very core of the European integration process. This is addressed by, besides the Treaty, by the EU Charter of Fundamental Rights, case law, various Commission documents, as well as documents produced by the Council and the European Parliament.

within-the-eu/C60C39F5025ECD2070A6761EDE79959B; Antoine Vauchez, “‘Integration-through-Law.’ Contribution to a Socio-History of EU Political Commonsense,” EUI RSCAS, 2008/10, 2008.

¹⁵ Pietro Costa and Danilo Zolo, *The Rule of Law History, Theory and Criticism* (Springer Link, 2007).

¹⁶ Laurent Pech, “Rule of Law as a Guiding Principle of the European Union’s External Action,” CLEER Working Papers 2012/3, 2012.

¹⁷ Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law Is Illegal* (Wiley-Blackwell, 2008).

¹⁸ European Commission, Communication From The Commission To The European Parliament, The European Council And The Council: Further strengthening the Rule of Law within the Union. State of play and possible next steps. COM/2019/163 final (2019).

2.1.1 Rule of Law in the Treaties

Although it was not explicitly mentioned in the text of the Treaty, the rule of law from the onset played an important role in the process of integration. The only direct reference to “the rule of law” was made in Article 31 of the 1951 European Coal and Steel Community Treaty (subsequently reiterated in Article 164 EEC), which stated that the function of the Court is to ensure the rule of law in the interpretation and application of the ECSC Treaty and of its implementing regulations.

Generally speaking, It can be said that the founding Treaties did protect the rule of law by providing for a supranational and independent court with a wide jurisdiction to guarantee that the “law is observed”¹⁹. Today, the task of that Court i.e. ECJ to 'ensure that in the interpretation and application of the Treaties the law is observed' is provided under the conditions set out in the Treaties. It means, under the Article 13(2) TEU the Court’s action, regarding the respect for the EU's values, can only happen within the competences conferred upon it by the Treaties. Moreover, the Court is not in the position to directly adjudicate on values such as respect for the rule of law²⁰. Nevertheless, respect for the rule of law is a cornerstone of the EU's legal order and, as such, it is used as a key reference for the interpretation of EU legal acts. The principles of the rule of law recognized as general principles of EU law have been codified in the Treaty on European Union and the Charter of Fundamental Rights .

It is worth of mentioning that it was a Court decision in case *Le Verts* that opened the door for codification of the rule of law in the form of a principle within the Treaty. The process has started with the Treaty of Maastricht, which for the first time constitutionalized the rule of law in the primary EU law. Later on, the Treaty of Amsterdam introduced a new provision incorporated in the consolidated version of the TEU, article 6. paragraph (1) as follows:

“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

Today the TEU's preamble states that the Member States confirm their 'attachment to the principles of the rule of law'. Article 2 TEU is one of the most important Treaty provision when it comes to the rule of law which clearly indicates that the EU 'is founded on ... rule of law', and

¹⁹ Laurent Pech, “The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox,” 2020, <https://reconnect-europe.eu/wp-content/uploads/2020/03/RECONNECT-WP7-2.pdf>.

²⁰ Peter Van Elsuwege and Femke Gremmelprez, “Protecting the Rule of Law in the EU Legal Order: A Constitutional Role for the Court of Justice,” *European Constitutional Law Review* 16, no. 1 (2020): 8–32, doi:10.1017/S1574019620000085.

that these 'values are common to the Member States'²¹. Yet it's worth should not be overestimated. It could be also seen as a mere proclamation of the core constitutional values with only limited direct legal implications²². This means that the assessment of member states' compliance with the values referred to in Article 2 TEU is essentially political rather than a pure legal given to the Council and the European Council, and not to the ECJ²³. The rule of law is partially codified in the Charter of Fundamental Rights. The elements are visible in Article 41 that provides for the right to good administration, and Article 47 that stands for the right to an effective remedy and a fair trial.

2.1.2. Case Law of the European Court of Justice

Prior to the incorporation of the rule of law into the Treaty its normative base in the EU Law was not known. Clarification of its unclear status within the EU Law was undertaken by the Court of Justice of the European Union. The Court of Justice of the European Union, as the guardian of the legality and internal cohesive instrument of the Union, once again demonstrated its dedication and resolve to define the status of Union's legislation and therefore, quite predictably, took the leading role in promoting the rule of law within the legal system of the then European Union. The Court of Justice in its seminal judgement *Les Verts* for the first time explicitly stated that the EEC was not a state rather a community based on the rule of law. In this judgement a special emphasis was placed on the fact that no Member State or institutions of the then EEC can avoid the verification of the harmonization of the measures adopted in line with the Treaty establishing a Constitution for Europe. Moreover, as a certain reference for this judgement the Court of Justice used the earlier judgement in the *Granaria* case. The expression "Community based on the rule of law" that got promoted by the judgement, in the beginning embodied in a certain manner the formal meaning of the rule of law principle which is in line with the existence of a legal system that ensures legal protection pursuant to the Treaties of the then EEC. In the explanation of the judgement, it was written that the expression "Community based on the rule of law" should be interpreted as Community based on justice system protection and control. Justice system protection and control here refers to the possibility to check all documents of the Member States and EU institution in order to ensure their harmonization with the Treaty and fundamental rights and the primacy of the EU Law. This has been recently

²¹ Ibid.

²² Ibid.

²³ Ibid.

confirmed by the ECJ decision in ASJP case that states the EU 'is a union based on the rule of law in which individual parties have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act'²⁴. Previously, in its judgement made on 28 March 2017, the ECJ expressed that possibility for individuals to seek effective judicial review is 'of the essence of the rule of law' in the Union²⁵. However, the judgement itself did not offer a full legal definition thus allowing for future various interpretations amid the circles of legal and political theorists.

In addition, it is worth mentioning that the EU Court of Justice in several other judgements emphasized the importance of the rule of law and the democracy as principles that represent a turning point for the further advancement of the European integration process²⁶.

A call for a new approach to the EU Rule of Law appears a result of the most recent case-law. The new approach is explained as the transition from a system of “declaratory” Rule of Law, where the adherence of the national authorities to this principle is merely a presumption towards a constitutional Rule of Law- based system.²⁷

2.2. Terminological Inconsistency

A deep analysis of the ECJ case law reveals an interesting linguistic side of the issue itself. The judgment in *Les Verts* case translated into German and French languages shows the intention of the interpreters to distinguish the regular meaning of the English term ‘rule of law’ given in the context of EU from their own interpretation. In short, the expression ‘Community based on the rule of law’ is the translation of the German term ‘Rechtsgemeinschaft’²⁸, formulated for the first time by Walter Hallstein, although it is well known that the terms used

²⁴ Court of Justice, Judgment of the Court (Grand Chamber) of 27 February 2018. *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*. Case C-64/16. (2018).

²⁵ Court of Justice, Judgment of the Court (Grand Chamber) of 28 March 2017. *PJSC Rosneft Oil Company v Her Majesty’s Treasury and Others*. Case C-72/15 (2017).

²⁶ European Court Reports, Judgment of the Court of 29 October 1980. *SA Roquette Frères v Council of the European Communities*. Case 138/79. (1980); European Court Reports, Judgment of the Court of 29 October 1980. *Maizena GmbH v Council of the European Communities*. Case 139/79. (1980); European Court Reports, Judgment of the Court of 1 June 1994. *European Parliament v Council of the European Union*. Case C-388/92. (1994); European Court Reports, Judgment of the Court of 30 March 1995. *European Parliament v Council of the European Union*. Case C-65/93. (1995); Digital reports (Court Reports - general), Judgment of the Court (Grand Chamber), 3 October 2013. *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*. Case C-583/11 P. (2013); Digital reports (Court Reports - general - “Information on unpublished decisions” section), Judgment of the Court (Grand Chamber) of 25 July 2018. *LM. Request for a preliminary ruling from High Court (Ireland)*. (2018).

²⁷ Dimitry Kochenov, “Upgrading Rule of Law in Europe in Populist Times,” *PRAVNI ZAPISI* XII, no. 1 (2021): 16–28, http://pravnazipisi.rs/wp-content/uploads/issues/1-2021/PZ_2021-01_-_02_Kochenov.pdf.

²⁸ *Les Verts / Parlament. Urteil Des Gerichtshofes* 23 April 1986. In der Rechtssache 294/83 (1986).

for expressing the material understanding of the rule of law are ‘Rechtsstaatsprinzip’ ili ‘Rechtsstaatlichkeit.’ Also, it is well known that ‘the rule of law’ may be translated in French by the terms such as: prééminence du droit, Etat de droit, primauté du droit, or principe de légalité. Interestingly, In the French language version of the judgement the Rechtsgemeinschaft was translated as communauté de droit. The Court, although clearly familiar with the classical term Rechtsstaat and the derived French term État de droit, terms traditionally used in translations by national lawyers, skillfully avoided the use of terms that suggest linking the rule of law to the state.

2.2.1. Reasons

Unreadiness of the Court of Justice to fully rely on the classical national concepts can be explained by the fact that the use of these terms, which are not disputable in the English version, may indicate the Court of Justice’s preferences going in the direction of identification, that is, building a European ‘superstate’. This is because, for example, the German notion Rechtsstaat, originated in Germany in 1798, combines the words ‘law’ and ‘state’ in a way that is putting more emphasis on the nature of the state than on the judicial process. The Court of Justice feared that such an approach could have started an avalanche of negative comments and judgements by those who are not advocating that kind of future for the Union²⁹.

Another explanation can be sought in the intention of the Court to avoid interpretation according to which the uses of terms „Rechtsstaat“ and „État de droit“ is mandatory only for the Member State and not the EU. The Court probably wished to emphasize that the EU is a supranational community in line with the rule of law principle, that not just the Member States were based on the rule of law.

Third explanation can be based on the previous one, that is, that the Court of Justice intended to use its powers to affirm “autonomous European understanding of the rule of law”. This approach appears logical because the rule of law is not purely a term out of the EU Law but a term located on the crossroads between different constitutional traditions of the Member States. From a legal aspect there is the wish to emphasize that the rule of law in the EU should not be necessarily interpreted and applied in harmony with the national understanding, instead the national understanding should serve as a measure of its kind to indicate the level of Europeanization of the rule of law. Here, it must be kept in mind that the provisions of the

²⁹ Laurent Pech, “The Rule of Law as a Constitutional Principle of the European Union,” Jean Monnet Working Paper 04/09 (New York, 2009), <https://jeanmonnetprogram.org/wp-content/uploads/2014/12/090401.pdf>.

primary law accentuate the fact that the rule of law on which the EU is build upon is common to all Member States. Existence of a such provision may suggest that the rule of law in the EU originates or grows out of the national law.

Likewise, the actual reason for stipulating a common note can be traced back to the need to ensure a consistent interpretation of the Treaty among the Member States. The concept of the EU rule of law however is not completely possible to identify with the national concepts, which vary³⁰. Analyzing the text of the EU Treaty reveals that they refer to the various national concepts of the rule of law. In other words, depending on the language, they acquire various linguistic interpretations that fit the national concepts, because is not possible to translate the term “Rule of Law” precisely and literally to other official languages. This is why we find that the “Rule of Law” coexists with the terms such as „Rechtsstaat“, „État de droit“, „Stato di diritto“, „Estado de derecho“, terms quite close in the meaning but not quite the same. This fact indicates that in order to arrive to a consistent interpretation of the Treaty in all member states, the “Rule of Law” at the EU level was not fully possible to understand in the same way as it was understood in national legal systems. Such a starting point produced the need for an autonomous understanding of the rule of law at the Union level. We understand that there is an EU supranational concept of the rule of law that has been described as “a constitutional principle” of the EU. As a basis of such statement we can specify that in *Les Verts* case, ECJ has avoided defining the EU as a “state governed by law”, but as a “Community based on the rule of law”³¹. Considering the fact that the text of the Treaty still does not contain provisions regarding what the term “Rule of Law” should encompass, this issue will continue to be an object of deliberation for the theorists of the law.

2.3. The Rule of Law as a Principle

By the formulation “The Union is founded on the principles” the Treaty clarifies that the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, are the starting point for defining the nature and character of the political and legal system of the EU as a whole. In fact, by constitutionalizing these principles, the foundations of the EU legal system were established to last long. To secure their implementation and

³⁰ Dimitry Kochenov, “The EU Rule Of Law: Cutting Paths Through Confusion,” *Erasmus Law Review* 5 (2009), http://www.erasmuslawreview.nl/tijdschrift/ELR/2009/1/ELR_2210-2671_2009_002_001_002.pdf.

³¹ Ricardo Gosalbo-Bono, “The Significance Of The Rule Of Law And Its Implications For The European Union And The United States,” *University of Pittsburgh Law Review* 72, no. 2 (2010): 229–360, <https://lawreview.law.pitt.edu/ojs/index.php/lawreview/article/view/159>.

compliance, the Treaty envisaged certain mechanisms. Also, the Treaty of Amsterdam positioned the respect of these principles as an important precondition for membership with the Union. Furthermore, the Treaty of Amsterdam envisaged the development and consolidation of democracy, human rights and fundamental freedoms, and the rule of law as general goals of the Common Foreign and Security Policy, cooperation policy and economical, political and technical cooperation policy with third countries, a feature subsequently envisaged by the Treaty of Nice as well.

2.3.1. The Rule of Law as a Fundamental Value

By coming into force, the Treaty of Lisbon had the “Amsterdam formula” undergo certain modification. Namely, the Article 2. of the TEU stipulates that the “European Union is founded on values”. A short comparative overview of the two articles reveals that a limited terminological change has occurred in the sense that the “principles” from the Article 6 paragraph (1) of the Treaty of Amsterdam, that is, the subsequent Treaty of Nice, were renamed to “values” in the Article 2 of the Treaty of Lisbon. Although one could get the impression that this was not a significant change, it appears that such a provision opened more space for interpretation of what the Union is founded on, since the semantic difference between the terms points out to this intention. If we take the theoretical interpretation of values, it could be presented as something without specific and distinct structure, as opposed to legal principles whose structure is completely clear and determined, therefore suitable for creation of legal rules by courts. Such latitude may also indicate a positive shift towards the establishment of an explicit relationship between the primary EU law and national constitutionalism of Member States whose majority accepted the term “principles”, because introducing only a theoretical difference does not suggest any particular intention of the legislator. On the other side, there are surely other theorists who suggested a certain regression within the context of the said terminological change. In their opinion, the terminological change, from principles to values, shall weaken the concept of the rule of law which must continue to exist as inherent principle of the EU institutional architecture. In any case, it has to be said that these differences and changes do not have a fundamental impact, meaning that they are not particularly innovative in comparison to the highest values of the constitutional establishment of Member States.

2.3.2. Principles vs. Values

Independently of the above deliberations, the actual reasons for the said terminological change remain unclear. The afore constatation is further strengthened by the fact that the Treaty in some other provisions retained the term “principles” when talking about the rule of law:³²

“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 (...)“

Similarly, the term “principles” is used for promotion of EU goals on the international scene. These goals, including, of course, the rule of law, represent a framework where activities for promotion and development of economic, financial and technical cooperation with the third countries take place³³.

The former intricacy and unclear distinction may direct us to the interpretation of the change from the term “principles” to “values” in the Article 2. of the TEU as not reflecting the clear intention of the legislator to give a meaningful distinction between the founding values and implemented founding principles. However, if we would view the terms “principles” and “values” as synonyms then one could ask what were the actual reasons for such endeavor. The term “values” may indicate that the Member States intended to make the sanctioning of the violations of the earlier principles set by the Article 2. of the Treaty more difficult and that is not in line with the intended strengthening of the EU institutions’ legitimacy and efforts invested in strengthening of the democracy and the rule of law in the EU. It is to be expected that the future reforms of the Treaty may offer new elements that will allow for a clearer comparative analysis why the term “principles” was replaced by the term “values”. However, from the current distance it is hard to give a precise judgement about it. Finally, from the above discussion about the relationship between the principles and values upon which the EU is founded upon it can be concluded with certainty that it indicates the fundamental character of the rule of law which rests inside the realm of those values, that is, within the EU legal system.

³² “Consolidated Version Of The Treaty On European Union. Article 21 (1)” (2012), https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

³³ “Consolidated Version of the Treaty on the Functioning of the European Union - Part Five: External Action By The Union - Title III: Cooperation With Third Countries And Humanitarian Aid - Chapter 1: Development Cooperation - Article 208 (1)” (2008), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E208:EN:HTML>; “Consolidated Version Of The Treaty On The Functioning Of The European Union. Article 212 (1)” (n.d.), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E212&from=NL>.

3. Conclusions

From this brief account we can fathom out that the rule of law is not only a fundamental value on which the Union is built upon but also a fundamental principle embedded in the legal systems of member states. Several arguments presented during the debate about the definition and scope of the rule of law indicated that the rule of law continues to exist as a perpetually controversial and contested principle. The lack of the universal definition of the rule of law should not surprise anyone considering its multifaceted character. This principle, generally accepted as a European constitutional heritage, on the other hand, is important for accomplishment and promotion of the rule of law within the Union. Therefore, Union's efforts to develop mechanisms for protection of the rule of law at the national level appear quite logical as a method of assurance and precondition for autonomous understanding of the rule of law at the level of the Union.

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