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A COVERT OR OPEN "BATTLE" BETWEEN THE THREE LEGAL TRADITIONS IN THE EU

(RULE OF LAW, RECHTSTAAT AND ÉTAT DE DROIT)

CRITICAL ASSESSMENTS OF THE ANGLO-SAXON VERSUS CONTINENTAL LEGAL TRADITION IN CONTEXT OF THE EU FUTURE

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Abstract

The paper deals with three key issues related to the existing concealed and/oropen "battle" in the EU among existing legal traditions. The first issue is - why within the EU framework, the emphasis is put on the application of the rule of law, and not on the other two existing principles (Rechtstaat and Ėtat de droit).The European Commission accepts that the precise content of rule of law 'may vary at national level, depending on each member state's constitutional system'. Commission suggest that the six well-known elements, such as: (1) legality; (2) legal certainty; (3) prohibition of arbitrariness of the executive powers; (4) independent and impartial courts; (5) effective judicial review including respect for fundamental rights and (6) equality before the law, stems from the constitutional traditions common to most European legal systems and is defining the core meaning of the rule of law within the context of the EU legal order.[i]

Two additional important points made by the European Commission are that the rule of law must be understood as a 'constitutional principle with both formal and substantive component', and second point is that the rule of law is intrinsically linked to respect for democracy and for fundamental rights.'Despite this formal stance of the European Commission that the rule of law principle in the EU originates from the constitutional traditions of the Member States, it can be easily noticed that this concept does not encompass the national values of the countries coming from East, Southeast and Central Europe, but exclusively highlights the values of the Western democracies. The second issue raised in the paper will be: why is this so? And the third issue is: what is the future of the EU in context of this selective application of legal traditions within the EU institutions, what needs to be changed in this regard? Inspired by the words of *Csaba Varga*[ii] that "the rule of law can do no more than remain a mere call to action, claiming more and better but with no sufficient rigor to be able to serve as an operative yardstick", the paper will try to provoke and inspire a space for objective and realistic analysis's for further scientific assessment.

Key words: Rule of law, Rechtstaat, Ėtat de droit, constitution, legal tradition, constitutional identity, EU law

1. Rule of Law, Rechtstaat and Ėtat de droit in the EU context – basic notions

With the end of the Cold War, the international organizations, same as the national states, regardless the nature of their economic and political system intensified their interest and support for the principle of the rule of law. There was practically an unanimous opinion that the rule of law, which was most often equalized with the concept of "rule of legislation, and not of people" is a *good thing*.[iii]

In the EU, this principle served as a foundation for the overall work of the organization in the light of the decision of than European Court of Justice (ECJ), today Court of Justice of the EU (CJEU), in the case of *LesVerts*,[iv] where it is stipulated that "everything that the Union represents comes from the treaties agreed on the basis of the free will and democracy of all member states".[v]

Although the specified court decision does not explain precisely the origin and the meaning of the rule of law at the Community level, it is clear that the Court views this principle in a positive light, as a fundamental principle for the entire constitutional frame of the former European Community. In the same line with this opinion is the stance presented by the Attorney General Mancini, who believes that the Court equalizes the rule of law with the basic court protection or the judicial control.[vi]

On the other hand, the Court did not clearly explain what the rule of law actually means at the EU level. Only the minimal idea of legality and judicial review is to be found in the ECJ's case-law. Such a minimalist perspective is not able to achieve major potential effects of the rule of law at the level of EU law.

The first conclusion that comes from the initial understanding of the formulation contained in the Court's decision, that "the Community based on the rule of law…", is that we are talking about a legalistic and procedural formulation that is closely connected with the traditional and mutual principles of legality, court protection, and control over the constitutionality and legality, which, as principles, are applicable for all modern and democratic legal systems. It is interesting that majority of the legal theoreticians and judges in the EU stand in defence of the narrow and pretty formal approach to the principle of the rule of law where "crucial for the rule of law is…the possibility for independent courts to reassess the decisions adopted by the public authorities".[vii] But, is this approach sufficient and equal with the position of all legal traditions in the EU member states?

When one speaks about the so-called "European model of the rule of law" it is a fact that this concept is under a strong influence of the three most representative legal traditions in Europe – the British, the French and the German.

The British, or better said, the English legal tradition is the oldest tradition that perceives andapplies in theory. In his famous work „Introduction to the Study of the Law of the Constitution (1885)", Albert Venn Dicey identifies three fundamental meanings of this principle.

First, the rule of law means that "no one can be punished, humiliated or in other way left to suffer without this to be regulated with a law, within the established legal system, and without a decision by the court of the country.[viii]

This implies directly that "any man, regardless his position in the community, is subject of the law and the authority of the judicial bodies".[ix]

Dicey views the principle of the rule of law through the traditional principles of legality and equality before the law. But, what makes the Anglo-American concept of the rule of law different from the French or the German is its evident distancing from the classic German or French administrative law by giving supremacy to the case-law when it comes to the human rights and freedoms and their protection. Further on, Dicey's thoughts go in direction of defining the formal-procedural approach vis-à-vis the essential approach.

According to the "formal school", the rule of law is a set of norms, set of regulations that make the core of the legal system. These norms must be clear, transparent, adequately explained to the public, relatively stable, and the process of their adoption must be led in accordance with the general rules of openness, stability and precision.

On the other hand, the contextual aspects of the rule of law indicate the need of an "easy" access to the courts which must be independent and impartial, and must limit the discretionary power of the public administration and the state, the public prosecutor and the other agencies and bodies that protect the system from criminal activities.

The formal school is not focused only on the earmarks of the legal norms, but also on how they are read and how they are applied within the laws. In other words, the formal concept of the rule of law often implies coordination with certain institutional demands (such as the principle of division of power, existence of independent judiciary, control of the constitutionality and legality by a separate body etc.), as well as with individual procedural demands (right to defence, right to efficient legal remedy, right to free access to the courts etc.).

Besides the formal school, the rule of law is also studied by the so-called material school, which focuses much more on the content, i.e. on the substantive goals of the law, than it is on the form itself. According to the followers of this school, the rule of law demands not only coordination

with certain formal demands, but it also insists on the elements that concern the "political moral" such as democracy and the fundamental civil rights.

Dworkin, for example, says that the rule of law, as a concept based on the human rights and freedoms, strengthens the moral and the individual political rights, whereas the rule of law and justice are viewed as separate and independent ideals.[x]

We should mention that in modern times there is practically no analysis of the rule of law that takes into consideration only the formal, or only the material aspects of this principle. The majority of the authors become very pragmatic when they pay equal importance both to the formal, and to the essential aspect.

Lord Bigham, for example, speaks of eight sub-rules that make the rule of law. Most of them concern the formal "qualities" of the legal system and the legal norms, i.e. their accessibility and their applicability, although the author does not deny the substantial elements of the rule of law when it comes to the adequate protection of the fundamental human rights.

In 2005, the UK adopted a Constitutional Reform Act, which says in the Chapter 1 that: "This act does not influence the existing constitutional principle of the rule of law or the existing constitutional role of the Lord chancellor with regard to this principle." It is interesting to mention that this act does not offer a new definition for this principle, but it concludes that "the rule of law continues to be a complex, and in certain sense, very imprecise concept".[xi]

The rule of law certainly suffers from the limited use made of it by the CJEU. Although it plays a significant role, its importance stops short of being a true guiding principle in Union law, something that could be expected of it given the prominent role this concept plays in the national legal systems of the member states. This is why only a simplistic idea regarding its essence exists today in the EU.

If it were to guide the EU in a true legal sense, the Court would be bound to embrace the substantive notion of the rule of law and employ it alongside the formal one. Such a move would also make it impossible to avoid formulating a well-defined EU law approach to the concept. This is where the reasons for all the outlined shortcomings are rooted: they all relate to the limited vision of the rule of law adopted in EU law, focusing on a narrow formal approach.

Unlike the British legal tradition that lacks clear constitutional concept for the rule of law, the German concept of the legal state (Rechtstaat) became a "central constitutional principle" that contains specific formal and essential components on which the entire legal and political system in Germany is based. Still, it could be mention that unlike the federalism, democracy and the social state which are explicitly guaranteed as fundamental institutional principles in the heart of the German constitutional order, the Rechtstaat (the legal state) is not explicitly highlighted as a compulsory principle for the Federal Republic, but it is more a compulsory principle for the regions (Länder), according to Article 28(1): "the constitutional order of the states (regions) must

be in accordance with the principles of the republican, democratic and social state founded on the law, within the meaning of this Constitution".[xii]

The difference between the formal and the material elements is also visible in the concept of the legal state as it is in the principle of the rule of law. The formal (procedural) elements cover the following: legality, legal certainty, proportionality, ban for retroactive applicability of the laws, etc. The judicial control of the legality and of the constitutionality, particularly the control in cases of violation of the constitutionally guaranteed freedoms and rights is also closely connected with the concept of the legal state.

The common law doctrine of 'government by law' (principle of governmental limitation) grounds the rule of law on the superiority of the law as proclaimed by the courts, but that is not the case with the doctrine of Rechtsstaat which precludes the possibility of the primacy of law over the state. In the German case the primacy of the state is settled as the most significant feature of the doctrine of the German Rechtsstaat. The German doctrine is based on the jurisprudence of the Federal Constitutional Court as well as on the constitutional doctrine of the legal scholars. The concept of "Rechtsstaat" has not only become the core concept of the German legal order, but also an element of the basic social consensus.[xiii]

On the other hand, the material elements of the Rechtstaat are not only connected with the state but also with the respect and protection of the human rights and freedoms, because the ultimate goal of the German "free liberal-democratic" legal order is to protect the fundamental freedoms and rights, by putting the emphasis on the respect for the human dignity. The German Constitutional Court had a particularly important role in protection of this value because by using the well-known court activism this court knows very often to fill in the legal gaps in the system with its own understanding of the principles.

In France, the concept of Ėtat de droit was made popular by the distinguished authors and theoreticians, such as Leon Duguit and de Malberg, who aimed to promote the idea for court control at "statutory" level.[xiv] This concept practically disappeared from the legal discourse in France in 1920 when it became clear that this reform simply cannot pass, which practically explains the lack of any formal reference to this principle in the 1958 French Constitution.

It is interesting to mention that the practical meaning of this principle in France got on strength with the introduction of the mechanism for constitutional control over the legality of the acts, a reform that was formally incorporated in 1958, and this term made a real come-back in the 1970-ties.

For a long time France was unable to find a term that would be equivalent to the English principle of *the rule of law*, i.e. for the German principle of *legal state*. This was explained with the existence of liberal definitions of the three antic terms present in the French legal vocabulary: Etat, République, and Constitution. Rousseau, for example, says that "any country in which the

rule of the law governs" can be described as a *Republic*.[xv] Similarly, the term of Etat (state) was used to describe the phenomenon of submitting the political power under the rule of law.

According to Montesquieu, the state, in its essence, can be described as "a society in which laws exist." Therefore, there is no need for an additional concept, such as the Ėtat de droit, because there is a conceptual difficulty in speaking about a "state" which, in fact, was not really a state governed by the rule of the law in that time.

The term Ėtat de Droit which appeared later, and its popularity particularly in the 19th century through the term Etat legal, which was considered a contrast of the Etat de Police, is explained with its close relation with the German concept of legal state, i.e. with the similar political situation in the Weimar Republic in the period from 1919 to 1933 and in France in the same period.

At that time, the French term Etat legal was "unbreakably linked with the parliamentary sovereignty and with the parliamentary democracy."The constitutional core concept in France that serves as a higher benchmark for parliamentary legislation is not the concept of rights-"droit", but rather the concept of law-"loi" and the "principe de légalité". Because there is no such instrument as a constitutional objection in France and because parliamentary legislation, once promulgated, along with certain government acts, does not come under the control of the French constitutional court ("Conseil constitutionnel"), the basic principle that is such a fundamental part of the German constitution, that all public powers are bound by the constitution, has not yet been fully established in France.[xvi]

In France the constitutional control of the legality of the acts had a problem with efficient implementation which made the legal authors, as well as the judges, preoccupied with developing social principles within the administrative law in order to protect the individual rights and interests of the citizens from potential misuse of power by the administrative authorities.

2. How did the principle of Anglo-Saxon legal tradition become dominant in the EU, where most of the Member States apply continental legal tradition?

- Key dilemmas -

If we take into consideration the fact that Rule of law, Rechtstaat, Ėtat de droit as principles are part of the constitutional history and tradition of United Kingdom, Germany and France, and as such, they contain the national specifics and characteristics of these three countries, one may ask why the other EU Member States would be forced to accept this constitutional traditions, and with that, also the constitutional identity of UK, Germany or France, at the expense of the elements which are part of their own constitutional traditions, and which is not even mentioned in the EU rule of law concept?

Why the EU, and also the Council of Europe, by forcing the rule of law principle, also force the common law constitutional and legal tradition of the United Kingdom and U.S., as a concept of values that should be implemented by all EU member states?

Does this mean that Germany, France and other legal continental countries have more trust in the Anglo-saxon values, then in their own?

How did it come to that for the EU to unconditionally accept the Anglo-Saxon legal tradition, despite the rich legal legacy left by Carl Schmit, Gustav Radbruch, Immanuel Kant, Voltaire, Alexis de Tocqueville and other continental legal theoreticians and philosophers?

If Rule of law, Rechtstaat and Ėtat de droit concern the general rule of limitation of arbitrary power and abuse by the state, or by the institutions through means of the law then why are they uncertain as to exactly what this aim requires, for instance, at the EU level?

Why are the EU institutions still demonstrating arbitrariness and very often abusing of its power when they are trying to solve problems or when they are facing different views regarding the meaning and the content of the rule of law principle?

Is the rule of law truly a fundamental principle, applicable in the functioning of the European institutions, or is it often used as a façade to conceal the numerous irregularities and flaws in the work of these institutions?

Undoubtedly, the rule of law is declared as foundational and guiding value of the European Union in Article 2 of the EU Treaty.

The European Commission as well as the CJEU claims to be the ‘guardians of the rule of law’. However, the EU has not defined exactly what is meant by ‘the rule of law’. This leads to the question: how can the EU claim to be guided by the rule of law, ‘common to all member states’, but not provide an account of what that means in practice?

There is some irony with a common law perspective in a discussion of the rule of law which, as a concept, emphasizes clarity and intelligibility in the law. The common law system has been historically marked by a plurality of sources of law such as, customs, judicial decisions, principles, and statutes which, in many cases, are not open, clear and applicable, and in some cases they do not have any legal value.

It is obvious that the English idea of ‘the rule of law’ is always trying to find its correlative formulations in continental European concepts of Rechtsstaat, Ėtat de droit, Stato di diritto, Estado de derecho, and so on. This group of concepts has a different orientation to that of the English expression, because the concept of the state has been placed at its core. The continental European formulations throw up an additional layer of controversy over the meaning of such phrases. Although the state, as the source of law, is competent to define its own competences, the

concept of ‘the state of law’ means that the state acts only by means of law and should therefore be conceived as being subject to law.

The state that is presumed to be the source of law is also the subject of law.

At the EU level, the EU political system and its institutions are at the same time the source of law as well as the subject of law.

This general conceptual game is not the only difficulty present in the continental European formulations. Although these formulations raise a common conceptual paradox, expressions such as Rechtsstaat and État de droit, have emerged from different constitutional traditions, existed in specific constitutional identity, and they possess different political histories.

Consequently, these European formulations cannot be assumed to be direct equivalents. Even if one sticks with the original German notion, it will appear that the Rechtsstaat presents itself as no less an ambiguous expression than that of the rule of law. The ‘rule of law’ presents itself as meta-legal principle various according to the different histories, cultures, and practices of European governing regimes. A question arises, how the Dicey’s concept of the rule of law, which is closely related with the idea for partnership between the Parliament and the courts could be applied in the EU or in any EU Member State that has no similarities with the British constitutional history? This is very hard to imagine.

3. The EU understanding of the rule of law at the stage of articulation

Many dissonant tones are present in the EU when it comes to the understanding of the rule of law principle. Different misconception of this principle refers to the generality, on one side, and the specificity that this principle has within itself, on the other.

Generality aims to explain the rule of law as an umbrella principle that unites all the most significant values and elements of the democratic legal order, while the specificity aims to indicate the main characteristics of the legal traditions in each national system, emphasizing national and constitutional identities of the country.

The rule of law should be firstly tied with the national legal system and national legal tradition in which it has developed, and then with the EU tradition. This means that the scope of the mentioned principles is highly diverse on national level and the presence of this concept in EU law does not ease the tension between all its possible meanings.

Another key aspect affecting the scope of this concept in the EU is in direct relation to the dual status of the member states within the EU legal order.

Each member state is both subject to the EU law and to a *pouvoir constituant*. This dual position means that the EU Treaties, being the sources of primary law of the European legal order, are at

the same time not by de fault the products of the EU legal order as such. Instead, they are negotiated and concluded by the member states at the intergovernmental conferences with subsequent ratification in accordance with the member states' own constitutional requirements. This legislation–constitution divide inherent in the EU legal order affects the Union principle of the rule of law.

The EU Treaty does not recognize the deep diverging trends existing between the concepts of the rule of law in different member states. Since neither the Treaties nor the Court of Justice of the EU explained with clarity what the rule of law means at the EU level, the presumption of commonness in approaches taken by the legal systems of the member states in filling the idea of the rule of law with substance almost hangs in a vacuum. Only the minimal idea of legality and judicial review is to be found in the ECJ's case-law.

For example, the common law doctrine of governmental limitation grounds the rule of law on the superiority of the law as proclaimed by the courts, but that is not the case with the doctrine of Rechtsstaat and other national legal traditions which precludes the possibility of the primacy of law over the state.

Similarly, the French concept État de droit as a safeguard of citizens' rights, is not limited to subjecting administrative authorities to administrative regulations and to laws but aimed to subject legislation to constitutional rules.

Both Rechtsstaat and État de droit holds a deep commitment to human rights which is understood to be inherent and inseparable from state rule of law.

What about the rule of law specific elements which are part of the Eastern and Central European states? Why are they not a part of the rule of law principle context?

As it is already mentioned, the rule of law is something that can never be detached from the political context and the historical experiences of a particular nation. Thus, what is the practical use of the term 'the rule of law' in such context?

The EU and the member states of the Union that are part of Western Europe will have to understand the specific and different position in which the countries of East, South-East and Central Europe were especially in the past, under the influence and direct power of other, larger forces, from which they finally free themselves and formed their own states much later than the countries in Western Europe.

Most of them gained independence after the First World War, while their sovereignty ended after only two decades of acquisition, during the occupation in the Second World War. For example, Poland was a protectorate of Bohemia and Moravia, Hungary and Slovakia were under the rule of the fascist regime, etc.

After the end of the Second World War, Czechoslovakia, Hungary and Poland became formally independent, but very quickly were incorporated into the "people's democracies" group of countries under the strong influence of the USSR and the power of the communist parties. For these reasons the democratic revolution of 1989 had such a strong nationalist charge and a powerful nationalist element. In this context, all the post-Yugoslav republics should be mentioned, including Republic of Macedonia.

The EU will have to understand the different historical sentiments of this region and overcome the challenges faced by the post-socialist states with greater attention and knowledge in the field of history. The EU should be more careful when it imposes concepts that have never been part of the constitutional identities of these post-Socialist countries, even though a large part of the principles on which the rule of law is based, including the rule of law itself, are part of the new democratic constitutions of these countries.

The Western countries will have to show more sensitivity towards their Eastern European friends, to understand the revolt of the "Easterners" who are showing them in relation to some Union's policies which are unjust and create a complex of inferior value to them. The EU rule of law concept should integrate the elements that make up the national and constitutional identity of the Eastern and Central Europe countries, their communist past and heritage, transitional justice, problems related to the transition etc. All of these lead to the question how can one differentiate between the fundamental values of the European Union, which are outside of the scope of national sovereignty including constitutional identity of the Member States, and the decisions that remain subject to national sovereignty and constitutional identity?

4. The implementation crisis of the rule of law in the EU is evident

Application of double standards in the EU is an everyday situation. It could be pointed out many procedural, institutional and political deficiencies concerning rule of law which can equally be identified in the so-called old EU member states.

For instance, the absence of a constitutional court in Sweden and Finland, the Dutch prohibition of constitutional judicial review, the weaknesses of the French Constitutional Council, the appointment process of the judges in Germany dominated by politicians, the scandal connected with the mass deportation of Roma in France, the disrespect of the Catalonian MEPs immunity in Spain, etc. as serious legal and political problems which receives relatively little attention from the EU institutions. On the other hand, the Rule of Law ’checklist‘ adopted by the Venice Commission is criticized by the academics as oversimplified with misleading picture of respect to the rule of law in a particular country.

The erosion of the rule of law is a wider phenomenon, detected throughout Europe in various tendencies. Plus it is commonly accepted that the rule of law is a political, and sometimes seen as

an ideological instrument manipulated by European, liberal political forces against countries that pursue alternative projects.

What do we learn from the above-mentioned?

Is the Rule of Law a concept without content, a term that anyone can fill up with their own content?

The Rule of Law is something that can never be detached from the political context and the historical experiences of a particular nation. Thus, what is the practical use of the term 'the Rule of Law' in such context?

How can one differentiate between the fundamental values of the European Union, which are outside of the scope of national sovereignty of the Member States, and the decisions that remain subject to national sovereignty?[xvii]

5. Conclusions

- It is up to all of us, European citizens, to guarantee the conditions for democracy and the Rule of Law in our countries. "Democracy and the rule of law are and have always been left seemingly entirely to the Member States to care about…because values are not the EU's founding ideas, or – to paraphrase Joseph Weiler – not in the EU's DNA".[xviii]
- The importance of the rule of law cannot only be viewed as a formal structure. Cultural and traditional elements also play an essential role.
- The EU rule of law is not a static idea, but a dynamic concept. It must anticipate the national and constitutional identities of all EU member states, and EU candidate states and adapt in line with their social developments. Everyone is for the rule of law but there is no agreement on precisely what it is, because "the meaning attributed to this expression shifts like the desert sand according to the individual whim of the exponent of one creed or another".[xix]
- There is no single, correct blueprint for the rule of law. Even the countries high on the Rule of Law Index have major differences in their practice. For instance, differences should be pointed out in due process of law and in administration of justice, type of constitution, institutional design of separation of powers, and their legal culture.
- The future of the EU lies in the inclusiveness of the autonomous concept of the rule of law. The rule of law must not be treated as an exclusive principle of the Western democracies which have the absolute right to dimension its content according to their political interests. The rule of law is also the core in the legal systems of the countries of East, Southeast and Central Europe. This principle in those countries is consisted with special and substantive issues and elements which must be incorporated in the EU rule of law concept. Any disregard of this fact is disregard of the rule of law.
- Rule of law is political and sometimes viewed as an ideological instrument. Often this principle is manipulated by some European political forces against countries who want to

cherish national and traditional values and interest. Some authors see rule of law as a mask for liberalism, and argue in the same way for their "inseparable unity in an intertwined duality".[xx]

- The rule of law does not reside in legislation but in souls and morals of the societies. Creating trust in law and legal institutions is not something that can be administered like a vaccine; it requires critical engagement of the national constituencies in all levels.

[i]Special Report, *EU support for the rule of law in the Western Balkans: despite efforts, fundamental problems persist*, European Court of Auditors, 2002, (Online) Available at: https://www.eca.europa.eu/lists/ecadocuments/sr22_01/sr_rol-balkans_en.pdf. (Accessed: 4 December, 2023).
(Online) Available at: https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN. (Accessed: 11 December 2023).
[ii] Csaba Varga (2021). *Rule of Law, Contesting and Contested*. Ferenc Madl Institute of Comparative Law, Budapest, p. 314.
[iii]It would be fair to outline the different, diametrically opposite opinions for the so-called dark side of the rule of law. See: Mattei, U. and Nader, L. (2008). *Plunder: When the Rule of Law is Illegal*, Blackwell Publication.

[iv]*Case 294/83 Les Verts v. Parliament* (1986) ECR 1339, para.23. We should mention that also before this case, in the *case of Granaria* (1979) the court put a reference saying that: "the principle of the rule of law in context of the Community." Further on, the decision reads: "The legal and the judicial system of the community established with the treaty point that the respect for the principle of the rule of law in context of the community applies to the people who, according to the Community Law, have the right to deny the validity of the rules that demand legal action…". It is interesting to see that in the German translation of the court decision, the principle of the rule of law is translated as Rechtsstaatlichkeit.
[v] (Online) Available at:http://europa.eu/abc/treaties/index_en.htm (Accessed: 21 September, 2023).
[vi] This position can be more broadly be found in the French legal literature, as a "right to decision", which often is understood not only as a right to legal remedy, but also as a right to access to independent court body, legal aid, fair trial, and finally, the right to trial in a reasonable timeframe. Although the Court is preoccupied with the individual right to efficient court protection, which is a general principle of the EC/EU law also determined in Article 6 and Article 13 of the ECHR, the Court still views the rule of law in a much broader way.
[vii] Jacobs, F. (2007).*Thesovereignty of law: The European way*. Cambridge: Cambridge University Press, p. 35.
[viii] Dicey, Venn, A. (1897).*An Introduction to the Study of the Law of the Constitution*, MacMillan, 5th Edition, p. 179.
[ix]Ibid, p 187.
[x]Dworkin, R. (1985).*A Matter of Principle*, Chapter 1, "Political Judges and Rule of Law", Harvard: Harvard University Press. p. 11-12.
[xi] Another provision incorporated in 1992 concerns the principle of the legal state, but only with regard to the relations with the EU. Namely, article 23, paragraph 1, reads that: "in context of establishing the United Europe, the Federal Republic of Germany shall participate in the development of the EU, which is founded on the democratic, social and federal principles, on the rule of the law and on the principle of subsidiarity, as well as on the guaranteed protection of the fundamental freedoms and rights which are fundamentally comparable with this fundamental law…" BVerfGE 23(1).
[xii]Peerenboom, R. (2004). *Asian Discourses of Rule of Law*. Routledge, p. 79.
[xiii] Radbruch G., Unrecht und übergesetzliches Recht (1946), (in:) R. Dreier, S. L. Paulson (eds.), Gustav Radbruch. Rechtsphilosophie. Studienausgabe, Heidelberg 1999, pp. 211-219
[xiv] Ibid, p. 79.
[xv] Rousseau, J.J. (1762), *Contrat social*, Livre II, Chap. VI.
[xvi]Martini S., Die Pluralität von Rule-of-Law-Konzeptionen in Europa und das Prinzip einer europäischen Rule of Law, (in:) M. Kötter, G. Folke-Schuppert (eds.), Normative Pluralität ordnen. Rechtsbegriffe, Normenkollisionen und Rule of Law in Kontexten dies- und jenseits des Staates, Baden-Baden 2009, pp. 303-344

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[xviii] Reference to J.H.H. Weiler. The Schuman Declaration

[xix] B.Z.Tamanaha (2002). The Rule of Law for Everyone?", Oxford Journal of Legal Studies, vol. 22, no. 1, p. 101.

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