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**Common values of the European Union: Status Quo
and the Challenges of Enforcement**

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Lately we hear very much about the European Union (EU) and its crisis. It associates with the Member States, - reflection of a possible Greek exit from the euro zone or even EU, British doubts about the fate of European Union, democracy weakening in Hungary, the popularity of Radical right parties (even Nazi direction), and the crisis relating to the opinions of Member States on important issues, such as the now, very topical unprecedented migration burden severance to the EU and the further EU humanitarian crisis and asylum policy. The European Union experienced more than one crisis. The most highlighted, abortive European Defense Community, "Luxembourg compromise", a failed Treaty establishing a Constitution for Europe, the economic and financial crisis and dozens of other major and minor failures in the EU's history. The literature even states that it is normal EU state: some kind of sharp crisis, both the public and the EU continue to face repression and it is not nothing unusual. Unfortunately, crisis in recent years are slightly different – it raises questions of EU Member states values. In view of the increasingly remembered the Treaty of European Union (TEU) in 2 Article lays down the framework of the Union values and the question of how to encourage the EU and its Member States to continue to follow these values, and to move in one direction. Article 2 of the TEU, the long seemed merely declarative provision begins gain meaning. Article 2 of TEU leaves the impression of elevation - respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights are indeed values, certainly showing how developed and advanced in the EU as a supranational organization. However, looking closer at it, we are likely to face the legal concepts and content of the labyrinth, encounter some confusion regarding the status of these values relevant to EU policies and the legal system, and probably would have contradiction feeling if we compare these ideals which often does not meet the reality.

Philosophical and legal bases: the European Union's values

In the dictionary philosophy values are defined as "individual lifestyle and social cooperation rules, orientation patterns of behavior, which, as an objective force, people must adhere subjectively assessing the relevant phenomena, thinking and controlling its actions"¹. This concept is reflected in the overall indicative values of nature, and thus allows to note that the concept of "value" can be analyzed at individual and societal levels. Namely, the latter level - the concept of public values - relevant for the present approach. Societal values usually considered to be that, which expresses the general public or specific the major part of interest. Values can be allocated to the different sections: religious, family, work, social, political and so on². Legal terms of values

¹ HALDER, A. Philosophy Dictionary, Vilnius: Alma littera, 2002, p.229

² World values survey, 2017

should be seen as moral and justice standards, ideal to be pursued and to be implemented in the legal principles and norms. From the ancient times values of rights, principles and morals were analyzed in a legal theory and philosophy works. As in 1957' Israeli scientist Y. Dror noted, that rule of law is the public expression of values and obedience enshrined the right level of rates yielded as much as the social values that are based on these rates, rooted in society³. So we can say that the law is based on the intrinsic rights values such as justice, equality and security (general, abstract level), and the values that are the choice of the legislature codified in a particular subject matter or policy in the field (at the level of the applied more)⁴. It is interesting to note that the values of the national level moved to the level of international organizations in formulating its policies and law⁵. Very clear example - the European Union, which in its fundamental values directly introduced primary legislation - founding treaties, to promote those values both among its members and in third countries. Although at first glance it sounds like the values are shared ideals and its link with international organizations in the direction in which they implement their goals and create works of organizations bodies. In addition, in the founding documents of international organizations enshrined values allow to expect that the states will follow it.

European Court of Justice (ECJ) has consistently held that, unlike ordinary international treaties, the Union's setting up agreements established a new legal framework, together with its institutions, and Member States in broader areas limited their sovereign rights and the subjects of which comprise not only Member States but also their nationals' bodies⁶. It is pointless to argue that such specificity of EU law, generally regarded as supranational law, far exceeding the limits of the normal boundaries of international law. This specific nature to guarantee inevitably of the EU requires two things: a) the legitimacy of the EU Member States and the EU in the eyes of citizens b) Member States' common objectives and valuable resemblance to encourage them to trust each other and work together. In the first case, the EU has the right to be given a valuable dimension to the EU made law as public relations regulatory system, as it would be acceptable for EU citizens, in line with and reflect their values. The second aspect has to be said that the values of the EU Member States is considered to homogeneity, commonality, the

³ DROR, Y. Values and the Law. The Antioch Review, 1957, Vol. 17, No. 4, p. 440–454

⁴ GONÇALVES, M. E., GAMEIRO, M. I. European values, fundamental rights and EU law and politics on biometrics. Fifth Pan-European Conference on EU Politics. Section on EU Law and Politics

⁵ Both intergovernmental cooperation and non-governmental organizations often mentions its values.

⁶ Gend & Loos 26/62 EU: C: 1963: 1, p. 23; Costa decision, 6/64, EU: C: 1964: 66, p. 1158 and the opinion 1/09, EU: C: In 2011: 123, paragraph 65.

foundation of European identity, it also facilitates of not only economical, but also political integration.⁷

EU treaties does not provide the concept of EU values, but it is generally accepted that it comes from the Member States common constitutional traditions (Article 6, Paragraph 3) and the ECJ jurisprudence that promote on the general principles of EU law. Nevertheless, there is a certain contradiction. On the one hand, for the Member States common constitutional traditions are the EU's source of values and the Union shall respect the national identities of Member States, inherent in the fundamental political and constitutional structures (TEU 4, Paragraph 2). On the other hand, the EU agreed time respect for the values of the EU on the basis of membership in the Union's rights, demanding that the state would respect the EU values - and it limits member states' constitutional identity⁸. The problem arises when the Member State has its own political choice (which is basically the result of democratic debate) takes decisions which are incompatible with EU values. Another obvious situation would be if the Member State's decision, is a contrary, e.g., to the principles of liberal democracy, the adoption by referendum - direct citizen decision. Is the EU defending its fundamental values, in this case has the right to interfere in the internal affairs of Member States, to restrict the choice taken in a democratic way, and to act as the policeman? The answer is, by law - "yes": the Member States have agreed to adopt the EU treaties and thus limiting their sovereignty. Belonging to a supra-national organization, state agreed to be bound by the rights and values of the EU which is the primary law.

EU values and their place in the EU Treaty

Treaty of the European Union in Article 2, belonging to the general provisions of the Treaty, states:

“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”

So Article 2 of TEU identifies six EU's fundamental values - respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. In the recent focus they key ones are on democracy, the rule of law and human rights. It should be noted that,

⁷ Member States and the rule of law: Dealing with a breach of EU values. EPRS | European Parliamentary Research Service, Briefing of March 2015

⁸ Editorial Comments: Safeguarding EU values <...>; Editorial Comments: Union membership in times of crisis. Common Market Law Review, 2014, Vol. 51(1), p. 1–11.

although it is not directly enshrined in the Treaty, but now due to migration from third countries, it is discussed about humanism as a common European value. Moreover, values of the EU are mentioned in the Article 3, Paragraph 1 of TEU, it states that the Union's aim - to promote peace, *its values* and the well-being of its peoples. The promotion of EU values as the objective of EU creates obligations for Member States. Member States commits to help the EU meet its tasks and to abstain from any measure which could jeopardize the attainment of the aim of the Union (TEU Article 4, Paragraph 3). The duty to promote EU values is reiterated in the Article 13, Paragraph 1 of TEU which states that the Union's shall have an institutional framework to promote its values. In this way, the promotion duty of values as a primary task assigned to the EU institutions.

Being "common to the Member States," these values must be respected and supported, for each country seeking to become a member of the EU (Article 49 TEU). So first of all values of the EU acts as a criteria for EU membership, a prerequisite for membership - only when the country is seeking to join the EU, it should respect values under Article 2 of TEU, only then it can be granted for a candidate status and negotiations are underway. The existing Member States should be guided by the values of the EU, in order to maintain their membership and full participation in the EU (TEU 2 and 7).

The uncertainties in the content of EU values

TEU Article 2 of the EU founding values in the overall content are not very clear, and leaves room for different interpretations. Respect for human rights is sufficiently detailed in the European Union Charter of Fundamental Rights (as well as the European Convention on Human Rights and the European Court of Human Rights), despite the fact the definition of democracy and the rule of law more difficult to clarify.

Although "democracy" and "rule of law" refers since Aristotle's time, so far (partly intentionally) not a single authoritative definition of "democracy" and "rule of law", attains till now and countries are always leaving a little space for interpretation, which should enter into the quite general terms to the content. However, it must be recognized that there is an international consensus on structural elements of democracy: that respect for human rights and fundamental freedoms, pluralistic political parties and organizations of the system, the rule of law, separation of powers, independence of the judiciary, public administration, transparency and accountability, free, independent and pluralistic media. But in the end is not clear and certain.

For some time it was considered whether the EU should give a formal definition of democracy, which would be the basis for the promotion of democracy in the EU. This proposal creates

a lot of issues. It can be a lot to consider whether such a definition is really needed, or it can be absolutely complete for the Member States, EU candidate countries and third countries (constituting Agreements with the EU) and if it should be identical. It is also unclear how such definitions should be presented, should be prepared compliance with the list (check-list) for supervisory purposes. Should the EU institutions do this, or the EU in general has jurisdiction to adopt such a definition and on its basis to take action, or to maintain balance of competences.

Primary law also provides pattern for the values of the EU's security arrangements. However, although Article 2 of the TEU in the legal architecture of the EU have an important place, the EU's fundamental values rather has weak protection - Article 2 of the TEU does not have a strong enforcement mechanism. In fact, the EU's values security is based on Article 7 of TEU, which provides special political procedure⁹ in which the main role goes to the Council and the European Council - the institutions composed of the Member States, which are particularly difficult to decide to run against each other for fear that it could turn around and before them .

Challenges for Europe - a crisis of values?

Traditionally, it was thought that all the EU Member States will definitely comply with Article 2 of the TEU values and stricter requirements apply only to the accession states. Based on this presumption the all EU law was created - both the internal market and participation in common institutions and such institutions, such as the recognition of judgments and the enforcement order, mutual recognition is based on the belief that all EU Member States equally embraces democracy and rule of law requirements. Hesitation for judicial independence and corruption in another EU country, would be difficult to keep recognition of judgments and the enforcement order as well as the sharing of a common market in the country, which intensifies extremely nationalistic policy.

Unfortunately, the recent state values homogeneity presumption was rebutted by real examples which raised a number of doubts about the EU and its Member States values and identity. It has become evident that the EU has successfully created legislation guaranteeing efficient goods, services, people and capital, but it still did not ensure democracy and the rule of law establishment in both the old and new EU countries.

The first black bird. *Austria*

In 2000' Austria came to power in a radical right-wing led by Jörg Haider Freedom Party (FPÖ). Nationalist party position and plans proved unacceptable to the EU, but as an

⁹ SADURSKI, W. Adding a Bite to a Bark? A Story of Article 7, the EU Enlargement, and Jörg Haider

organization has not taken action – did not have appropriate mechanism. In this case, nature of bilateral diplomatic sanctions against Austria, individually applied all of the then 14 EU Member States to isolate it from the international arena (did not elect the Austrian representatives for the international organizations, failed to appear at events in Austria and so on). However, the sanctions only caused the Austrian population resistance and further increased the popularity of J. Haider. Portugal, which at the time was chaired by the Council, had the initiative of the then 14 EU Member States to set up a committee (*Three wise men*) and ordered it to report on the situation in Austria and setting area of values. Despite all the doubts about democracy and the rule of law, the committee nevertheless found no real damage and soon the state implement political isolation was abolished as unproductive.

Hungary's constitutional reform

Perhaps the most famous and highly attracted a lot of attention has been an example of the Hungarian constitutional reform. In 2010' came to power Fidesz party and formed a government led by Victor Orban, who took on the task to change the country's constitution. The new constitution came into force in 2012' and immediately attracted the strict criticism both from other countries and the EU (the European Parliament, the European Commission, and the EU Agency of Fundamental Rights) and other international organizations. Possible procedure under Article 7 of TEU was raised related to the issue. The main criticism was hasty drafting of the Constitution without consulting with the opposition and civil society, transparency and a lack of care reform during operation incompatible with EU values and human rights, judicial and other relevant authorities with the independence of the media. Despite the massive reaction by the international community, the situation has changed little so far, and Article 7 of the TEU remains unused¹⁰.

Fluctuating democracy in Romania

Bulgaria's and Romania's accession to the EU of democracy and rule of law issues were particularly relevant - the accession negotiations was a clear need to further ensure compliance with these values after accession, as the progress made for not returning to the previous situation. While the state was admitted to the EU club, doubted whether the entry requirements apply solved the long-term national problems of democratic governance and the rule of law - Romania and Bulgaria still had some way to go for judicial reform, the fight against corruption and organized crimes. With this in mind and in order to ensure the proper functioning of EU policies and institutions, the EU has created a special "Co-operation and Verification Mechanism (CVM)" -

¹⁰ TÓTH, G.A. Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law. Budapest: CEU Press, 2012.

protection mechanism to monitor compliance with the essential requirements for accession to the EU after accession.

Despite these arrangements in 2012' democracy, the rule of law and compliance issues re-emerged clearly in Romania. Social Liberal Union (USL) won elections and has taken action against the country's president, the courts, have departed from the country's constitution requiring the removal of judges of the Constitutional Court, initiated by the politicization of media. In response, the European Commission expressed concern about the situation and demanded the restoration of the rule of law¹¹, a lot of attention to this issue was devoted by other international organizations as well.

In 2015' autumn Poland faced with a similar situation. In recent years, Europe has made a huge number of refugees and the risk associated with them has led to an increasing number of radical right-wing parties won public support, which suggests that values compliance issues may arise in other countries. Because of these trends, the EU and the Member States have to rethink values in the EU legal system, constitutional systems of the Member States and to assess the possibilities to strengthen their security methods.

As pointed out by, the Dutch University of Groningen professor. D Kochenov who is contemplating about EU's values, while the EU has focused on the development of the internal market, the idea of European unity has been forgotten, the EU 'raison d'être' and the EU is facing a new crisis, a lot stronger and more formidable than the previous - the crisis of values¹². This is the biggest crisis in the history of the EU, which cannot be so easily solved by normal EU legislative measures. In this case, the problem is not concerned with the specific Member State, which do not agree with one or other legally binding EU rule or applying it incorrectly. When values are cardinally distinguished, the specific Member State becomes fundamentally different, and non-observance of values due to Article 2 of the TEU destroys the states' participation in European Union's integration process and reshapes its position due to brighter future of EU.

¹¹ Statement by the European Commission on Romania, Memo, 2012-07-06
¹² KOCHENOV, D. Europe's Crisis <...>.