


Katja Meier | Astrid Lorenz | Mattias Wendel (Hrsg.)

Rule of Law and the Judiciary



Nomos

<https://doi.org/10.5771/9783748940999-1>, am 28.06.2023, 13:16:07
Open Access –  – <http://www.nomos-elibrary.de/agb>



Katja Meier | Astrid Lorenz | Mattias Wendel (Hrsg.)

Rule of Law and the Judiciary



Nomos

Die Herausgabe dieses Tagungsbands wird mitfinanziert durch Steuermittel auf der Grundlage des vom Sächsischen Landtag beschlossenen Haushaltes.

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

1. Auflage 2023

© Die Autor:innen

Publiziert von
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden
www.nomos.de

Gesamtherstellung:
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN (Print): 978-3-7560-0587-1
ISBN (ePDF): 978-3-7489-4099-9

DOI: <https://doi.org/10.5771/9783748940999>



Onlineversion
Nomos eLibrary



Dieses Werk ist lizenziert unter einer Creative Commons Namensnennung 4.0 International Lizenz.

Inhaltsverzeichnis

<i>Katja Meier</i> Foreword	7
<i>Didier Reynders</i> Foreword	11
<i>Astrid Lorenz, Mattias Wendel</i> Rule of law challenges as integration booster, learning from resilient actors and ambiguities of rule of law by design Multiplying perspectives on the rule of law	15

Part I: Foundations and Challenges

<i>Astrid Lorenz, Lisa H. Anders</i> Conceptions and perceptions of the rule of law and how studying them can help to resolve the EU rule of law crisis	37
<i>Ivo Šlosarčík</i> The future of rule of law in the European Union beyond Polish and Hungarian controversies A Czech view	61

Part II: Scholarly Perspectives on Judicial Independence

<i>Jan Němec</i> Judicial independence in the Czech Republic – Walking on a tightrope	79
<i>Werner Reutter</i> German state constitutional courts: the justices	99

Mattias Wendel

Enforcing the independence of national courts by means of EU law Standards, procedures and actors as exemplified by the crisis of the Polish judiciary 123

Anne Sanders

Judgments and recommendations
The Council of Europe's work protecting the rule of law and judicial independence 143

Part III: Perspectives from Practice

Adam Bodnar

The role of Polish civil society in supporting EU activities as regards protection of judicial independence and other elements of the rule of law 167

Klaus Rennert

Keynote speech
Judicial appointments: Between politics, independence and professionalism – An impulse for discussion 181

Bettina Limperg, Joachim Herrmann, Wojciech Piątek, Ivo Šlosarčík

Panel discussion
How to overcome the challenges of the rule of law in the EU? 187

Contributors 207

Foreword

Katja Meier

Without exaggeration, the rule of law is an indispensable component of democracy and a civilized community. However, it is anything but easy to put its essence into a formula and to make tangible what lies behind this rather abstract concept. For this reason, we like to help ourselves with linguistic images. We often refer to the rule of law as the “basis”, “cornerstone”, “pillar” or “foundation” of our coexistence. Where the related terms pass our lips naturally and routinely, there is a danger that we no longer even examine them for their true content, that we use them carelessly and entirely by reflex. Nevertheless, I believe that in Europe – German is by no means the only language in which such linguistic images are common – we consciously choose the related terms, for there is nothing decorative about the rule of law. It is neither a mere ornamental accessory nor an addition to the otherwise ready-to-occupy building of our polity.

Instead, it is true that only on the foundation of the rule of law can a political edifice be built that is characterized by stability and can withstand all storms. However, we must ensure that the foundation remains strong and is regularly renewed. In order to contribute to this, the Saxon State Ministry of Justice and for Democracy, Europe and Equality, together with the University of Leipzig, has launched the Leipzig Conference on the Rule of Law, which is to become an annual event. With this conference, we not only acknowledge the immense importance of the rule of law in the more than 65-year history of the European Union, but we also want it to be understood as the key to the future of the European community. It stands for the certainty that state power is not exercised arbitrarily but is bound by law and justice. It stands for confidence in the protection of our rights by independent courts. It guarantees that we can live freely, equally and in dignity. In other words, the rule of law affects our self-image as Europeans.

Within the European Union, we must constantly work to preserve the rule of law, and recent developments in some Member States have shown that this, unfortunately, does not always succeed. At the same time, we in Germany should not argue from a high horse in this debate. German history, in particular, repeatedly proves that the rule of law never comes

about on its own but has to be worked for and defended against threats through constant efforts. In Germany, where a contemporary tradition of the rule of law had to develop anew after the Second World War, we know all too well about the myriad challenges linked to it.

Aware of these historical connections, we in Saxony feel a great need to use our diverse cross-border contacts, especially those with our neighbouring countries, Poland and the Czech Republic, to preserve the common European value standard. Due to its history of transformation to the rule of law and its geographical location in the heart of Europe, the Free State of Saxony is in a unique position to have a unifying effect in the current debate on the rule of law in Europe. We have been working closely with Poland and the Czech Republic for a long time in the area of justice, for example in exchange projects and judicial partnerships as well as in cross-border criminal prosecution. Thanks to these contacts, we can also react together to European crises and current political developments – this kind of European cohesion has been called for not only since the aggressive Russian war against Ukraine. There is no lack of evidence that within the European Union our commitment to the rule of law is needed daily. In particular, judicial independence must be preserved, corruption must be fought, freedom and media pluralism must be protected, and civil society activities must be defended against state restrictions. Where dangers arise, they must be named, as was done again in the EU's third annual report on the rule of law (2022). Moreover, existing means must be consistently exhausted and, if necessary, the toolbox expanded to combat these dangers.

However, where the lines of conflict threaten to harden, it is also worth trusting in the power of dialogue. We may sometimes use the magic word “dialogue” in the debate on the rule of law in a similar inflationary manner as the linguistic images of foundations and pillars already mentioned. On the other hand, honest dialogue that deserves the name is rare. Nevertheless, this is what is needed now to defuse existing conflicts and find a common European denominator again on the rule of law. The Leipzig Rule of Law Conference aims to facilitate such a dialogue process. A mutual understanding of the rule of law cultures of Western and East Central Europe can help point out threats to the rule of law, explore their causes, and develop joint solutions. Another decisive factor from the beginning was the desire to bring European issues to Saxony and to help shape Europe from here, involving as many interlocutors as possible from politics, the judiciary, academia and civil society.

Leipzig was the perfect place for such a dialogue on the rule of law in many ways. It is impossible to imagine Leipzig's history without the struggle for the rule of law – think of the Peaceful Revolution of 1989, when people, inspired by the Polish civil rights movement, took to the streets to demand freedom, democracy, human dignity and respect for the law. Today, Leipzig is home to the Federal Administrative Court, the 5th Criminal Division of the Federal Supreme Court and the Forum Recht, among others, not to mention a university with an excellent reputation in the field of research into the rule of law. In a university city like Leipzig, which is as lively as it is worth living in, it is also possible to reach a young audience interested in European policy issues – conference content such as the student “Moot Court” were explicitly aimed at this group of addressees.

Today, Leipzig stands for the rule of law: for independent courts and institutions committed to protecting the human dignity of every individual. It is not something to be taken for granted, but an achievement we should value and preserve. When we talk about challenges to the European rule of law here in Leipzig, we are also talking about ourselves and the importance of the rule of law for our coexistence. I am delighted that the Leipzig Rule of Law Conference was so well received at its premiere, and I am confident that it can continue to make an essential contribution in the future so that the conversation thread does not break.

We must never put the rule of law itself up for discussion or otherwise put it at risk. Nevertheless, we may and must passionately debate the rule of law. The rule of law only exists if we actively engage with it and make it the yardstick of our political thinking and action. Let us be clear in a candid discussion about what the rule of law means today in Europe and what traditions it is shaped by within the individual Member States – then we will not only have the chance to defuse existing conflicts but also take a step towards a genuine European community.

Foreword

Didier Reynders

The rule of law is fundamental to a stable, resilient, fair and democratic political, economic and social environment across the European Union. It is essential to a well-functioning Single Market and to the Union as a whole. It is also a reflection of Europeans' aspirations and values, enshrined in Article 2 of the Treaty. The Russian invasion of Ukraine is a reminder of the need to uphold our basic EU values. Protecting our citizens and their rights needs a determined and consistent defence of the rule of law across the EU.

Respect for the rule of law is a prerequisite for protecting all other values, and it is crucial for the effective application of EU law and for mutual trust between Member States and their judicial authorities. We also need Member States to uphold the rule of law because it is essential for our internal market to function. When they know courts of law will uphold their rights, creditors are more ready to lend, businesses will be more active and innovative companies are more likely to invest. In fact, respect for the rule of law in Member States is a condition for the very functioning of the European Union itself.

It is important to recall that, while Member States have different legal systems and traditions, the core meaning of the rule of law is the same across the EU. The key principles of the rule of law are common to all Member States – legality, legal certainty, prohibition of the arbitrary exercise of executive power, effective judicial protection by independent and impartial courts respecting fundamental rights in full, the separation of powers, permanent subjection of all public authorities to established laws and procedures, and equality before the law – are enshrined in national constitutions and translated in legislation.

The case-law of the Court of Justice of the European Union (CJEU) on the rule of law and judicial independence provides a clear set of legal requirements which Member States have to follow in their rule of law-related reforms. Respect for the rule of law entails compliance with EU law and the principle of primacy of EU law, which is the foundation of the EU.

In recent years, we have witnessed concerns regarding respect for the rule of law emerging in some Member States. This shows that the rule of

law cannot be taken for granted. Therefore, the Commission has gradually developed and used a variety of instruments to address challenges to the rule of law over the last few years, the so-called Rule of Law Toolbox.

A new instrument has been added to this toolbox in 2020 with the annual Rule of Law Report. It is conceived as a yearly process, during which we aim to prevent problems from emerging or deepening. It also allows Member States to learn from each other, through an exchange of best practices. This improves our knowledge of what is happening in the Member States, which is also crucial for making the best possible use of the other tools in our rule of law toolbox.

The Commission remains fully committed to making use of all the tools at its disposal, as necessary to promote and uphold the rule of law. For example, in critical situations where judicial independence or the independence of regulatory authorities in a Member State is affected, the Commission can, as the guardian of the Treaties, launch infringement proceedings against a Member State. We can also protect the EU budget against breaches of the rule of law. We now have a conditionality mechanism in force since 1 January 2021. And both OLAF and now the European Public Prosecutor's Office are there to protect the budget against fraud.

We also see a number of national recovery plans investing in improving the rule of law. Many Member States are doing this with investment in the digitalisation of justice for example which we saw during the pandemic was extremely important.

But it is also true that we still need to do more to build broad awareness across Europe and help our fellow citizens understand why the rule of law matters in our daily lives. Germany, for example, has successfully carried out a public awareness campaign as part of 'the pact on the rule of law'.

In a time where the rule of law is under pressure, it is of the highest importance to strengthen the rule of law culture among the general public and to promote a better knowledge of the requirements of EU law and European standards. Civil society, media, Member States' education systems and of course academia can all play an important role to ensure a place for the rule of law in public debate and educational curricula.

Initiatives like the first tri-national conference on the rule of law organised by Saxony together with Leipzig University are therefore very important: they make a concrete contribution to building this narrative and a genuine culture of the rule of law in Europe. They provide a forum for direct exchange between academia, the judiciary and politicians on the key

challenges we are facing today. And what is particularly welcome is that the conference also involved students.

Young people can – and should – play an important role when it comes to building the rule of law culture. The tri-national moot court that was organised as part of the conference is an excellent example of this. It has brought law students from three countries together and allows them to both engage in a serious academic exchange on an important EU law topic and at the same to build personal relationships across borders.

Looking ahead it is true that at the moment, we are facing some serious challenges. But I do believe that change is coming. When I look back over recent years, it is clear that there has been a change in approach to EU-level discussions on the rule of law.

Today the rule of law, including country-specific discussions, has a permanent place on the agenda of the General Affairs Council. This was unthinkable only a few years ago. For a good part, this is the result of the introduction of the EU rule of law Mechanism with the annual Rule of Law Report at its centre.

The 2022 Rule of Law Report, adopted on 13 July 2022, further builds on this process and takes the next step in the Commission's investment in the rule of law: for the first time, the report includes concrete recommendations to all Member States. In line with the preventive nature of the report, the objective of these recommendations is to support Member States in their efforts to take forward ongoing or planned reforms, to encourage positive developments, and to help them identify where improvements or follow-up to recent changes or reforms may be needed, also with a view to address systemic challenges in certain cases.

But defending the rule of law is not just a task for the European Commission and the EU institutions in general. It is a task for the Member States and for all people living in Europe. And of course, the regions of Europe are part of this too. Through conferences such as the one organised by Saxony and Leipzig University in January 2022 and in the day-to-day cooperation across borders, you are making important contributions to building the culture of the rule of law bit by bit. These are vital contributions to the rule of law culture in Europe and I encourage you to further build on this experience in the coming years.

