



Tracking the Rule of Law

Will those who seek the truth find punishment?

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The leaders of most countries are currently busy fighting the second wave of the coronavirus pandemic and are trying to maintain the normal functioning of their nations' economies. Meanwhile, the European Commission has once again decided to turn to the noble, but to put it mildly, naïve value of the rule of law. Věra Jourová, who took over Timmermans's old portfolio under the new title of "Values and Transparency" spoke of an "ill democracy" in Hungary at a time when the Commission was working overtime to produce a report on the state of the rule of law in every member state of the European Union.

The document was supposed to have been published earlier, however, due to the cancellation of the EU summit that was originally planned for September 24th-25th, the release of the document was postponed and it has just seen the light of day. I am quite sure this was done not in the spirit of fair partnership. The idea of an annual report of this kind was formalized last year by the Commission, after a number of similar plans were examined. According to official reasoning: "The Rule of Law Report and the preparatory work with Member States takes place annually as part of the Mechanism, and will serve as a basis for discussions in the EU as well as to prevent problems from emerging or deepening further. Identifying challenges as soon as possible and with mutual support from the Commission, other Member States, and stakeholders (...) could help Member States find solutions to safeguard and protect the rule of law." Although at this point nothing about the EU would surprise me, in theory no legal consequences follow from this "report". It has no basis in the EU Treaties and all that happened is that the Commission expanded its own internal operating rules by adding another task for itself to accomplish. Naturally, we have no doubt that this report will serve as an excellent reference point for the eurocrats devoted to liberal democracy in the future, when they decide to deploy genuine legal procedures with real consequences in their efforts to harass the individual member states.

We should clarify a few things before the report is read since such "soft law", as well as the retrospective exaggeration of its legitimizing potency, is a tried and trusted tool of creeping legislation and of widening EU competences. Let's start with something that has been explained many times, over and over again, but seems not to have been understood by Brussels: the "rule of law" as a normative, that is as a precisely defined legal category, simply doesn't exist, and therefore, it is not possible to measure it. At most, it is a principle – a broad and vague category whose individual aspects (freedom, equality, etc.) might be expressed semantically, but even these elements can only be defined in ways that depend on one's worldview and cultural background.

Perhaps the best way to demonstrate the pliable nature of what is called the "rule of law" is to look at its history. The modern "rediscovery" of the term can be attributed to the British legal tradition and namely the liberal (in the 19th century sense of the word) jurist Albert Venn Dicey, who rendered Aristotle's "nomarchy" (roughly meaning the primacy or origins of rules) in English as "rule of law". He described it as the legal organizing principle of his age and specifically of the British Empire. Consequently, no one should be surprised that Dicey's concept was not enthusiastically embraced on the continent where the term "Rechtsstaat" developed in German-speaking countries, and the idea of "constitutionnalisme" appeared in francophone areas.

However, it isn't just the linguistic (and conceptual) contradictions lying just under its surface that make the "rule of law" difficult to grasp. Although there are strong parallels in the historical roots of European states and societies (e.g.: the Judeo-Christian tradition, ancient Greek philosophy, Roman law), and despite our postmodern world, there are tangible differences in the constitutional and legal frameworks of European countries, ranging from Portugal, through Latvia and Sweden, all the way to Hungary. There are member states without a separate constitutional court (the Netherlands and

Sweden), member states where the administration of the judiciary falls under the authority of the government (France), countries where judges may be members of political parties (Germany), not to mention the very diverse ways in which electoral systems are organized, and the regulation of media and mass communications is managed.

Incidentally, diversity, and respect thereof, is among the founding principles of the European Union. However, it is quite evident from the “Article 7” procedures now under way against Hungary and Poland, as well as from the above-mentioned plans of the Commission, that the eurocrats do not much respect diversity. They contend that there is in existence a universal concept of the rule of law, a standard that can be anchored in law, and thus member states can be tested for it by the social justice engineers. Part of the problem stems from the fact that no such concept of the rule of law exists and as a result they are attempting to make one up out of whole cloth. For instance, they say that the values enumerated in Article 2 - justice, freedom, democracy, equality, solidarity – are uniform across all the member states. But it is clear that the above terms are not legal concepts, but political categories and a conservative, a socialist and a liberal person (although the worldviews of the latter two are converging) will disagree over what constitutes an act of justice or solidarity in a society. The more troubling issue is that the ideological tribunals in Brussels believe their own progressive and leftist interpretation of the above-mentioned political categories to be not merely universal, but also neutral. Recall how the “moderate mainstream” insists that only liberal democracy is democracy, and any other alternative, however democratic, must be described as “ill” to quote Jurova.

This is how we get to the point where the “rule of law”, which is a political category with divergent evolutions in various European regions and with different interpretations available even today, is wrapped in a cloak of objectivity, expert opinion and, especially, neutrality. Then this supposedly universally accepted, but really left-liberal standard is deployed to punish those who dare to reject democratic multiculturalism, sexual immorality or a culture glorying in death. Another way to put this is to say that those who search for truth outside the boundaries set by liberalism are to be punished.

Further dangers lie beyond the nefarious tactics and the double standards. We see the ideological codification of the libtard interpretation as the sole framework of political discourse. As a form of cultural imperialism, it is also anti-democratic. It marginalizes and punishes dissenting voices that fail the liberal test in a legal sense, and in a political sense it excludes these voices from “the club”. Even the legitimacy gained in democratic elections matter little unless it is won by a liberal party. Any other political direction is not fully “legal”, not in accord with the “rule of law”. A more functional danger is the potential disintegration of the European Union. If the members of the “club” would decide to withhold otherwise legitimate funding from those member states that have “fallen into illiberal sin” because they judge them to be “undeserving”, what then will hold the Union together? It certainly can’t be the missing “shared values”. What will motivate the member states so harassed to remain within the club?

Unfortunately, those who today, citing the need to further the European integration, work on entrenching the “rule of law” regardless of the unforeseeable and uncontrollable consequences of doing so, are in reality bringing together the building blocks of an abominable, uniformly bureaucratic system based on the “rule of blackmail”. Naturally, always in the name of diversity, be it ethnic, sexual or gender. Today, the European Commission, supposedly the guardian of the EU Treaties, has its own LGBTQ (I assume they mean homosexual) strategy and gender strategy. I don’t think Hungarian citizen voted for this when we had the referendum on joining the European Union in 2003.