

The Evolution of EU Values and Their Role in Shaping Ukraine's Legal Identity and Path to the European Union¹

Abstract

The European Union is a supranational organization that has established and developed its own unique legal order, based on such a phenomenon as supranational law. This law brings together norms of international law, national legal traditions and, what is crucial, its own unique legal principles, which place the EU legal system in an independent position vis-à-vis other legal systems.

For a long time, European integration was associated primarily with economic issues and the pooling of states for the development of the common market. This was entirely logical in the light of the original priorities of the European Communities and the desire to intensify free trade among the Member States. However, the evolution of the European Union has led to a situation where the Union's focus is now directed not only at the economy, but also at value-based orientations, which operate as certain standards both for Member States and for third countries that develop their relations with the EU. What is meant is the growing attention the EU pays to the observance and development of its values.

The greatest conceptual challenge the EU faces at the present stage of its functioning is the violation of EU values by individual Member States and the weakness of the mechanisms to counter such attacks. European institutions have always paid attention to the observance of values by candidate states and neighbouring states, but no one could have imagined a situation in which values would be violated by EU Member States. As a result, the protective mechanisms enshrined in the founding Treaties turned out to be rather nominal and unable to prevent violations. This requires a rethinking of the constitutional foundations of the EU and radical reforms of this organization.

The aim of this article is therefore to examine the evolution of the status of EU values, their interpretation by the Court of Justice of the EU, and to analyse the mechanisms for their protection.

Résumé

L'Union européenne est une organisation supranationale qui a établi et développé son propre ordre juridique, fondé sur un phénomène tel que le droit supranational. Ce droit rassemble des normes de droit international, des traditions juridiques nationales et, ce qui est essentiel, ses propres principes juridiques uniques, qui placent le système juridique de l'UE dans une position indépendante par rapport aux autres systèmes juridiques.

1 Some sections of this article are adapted from the author's earlier publication in Ukrainian journal: Komarova T. EU values as a guide for Ukrainian legal system. 2024. Special Issue. *Problems of Legality*. P. 61-82.

Pendant longtemps, l'intégration européenne a été principalement associée à des enjeux économiques et à la mise en commun des États pour le développement du marché commun. Cela était tout à fait logique au regard des priorités initiales des Communautés européennes et de la volonté d'intensifier le libre-échange entre les États membres. Cependant, l'évolution de l'Union européenne a conduit à une situation où l'attention de l'Union ne se porte plus uniquement sur l'économie, mais aussi sur des orientations fondées sur des valeurs, qui s'imposent comme des normes aussi bien pour les États membres que pour les pays tiers développant leurs relations avec l'UE. Il s'agit là d'une attention croissante que l'UE porte au respect et au développement de ses valeurs.

Le plus grand défi conceptuel auquel l'UE est confrontée aujourd'hui est la violation de ses valeurs par certains États membres et la faiblesse des mécanismes permettant de contrer de telles atteintes. Les institutions européennes ont toujours été attentives au respect des valeurs par les États candidats et les États voisins, mais il était impensable que des violations puissent venir d'États membres de l'UE. En conséquence, les mécanismes de protection inscrits dans les traités fondateurs se sont révélés plutôt symboliques et incapables de prévenir les violations. Cela nécessite une reconsidération des fondements constitutionnels de l'UE et des réformes radicales de cette organisation.

L'objectif de cet article est donc d'examiner l'évolution du statut des valeurs de l'UE, leur interprétation par la Cour de justice de l'UE, ainsi que d'analyser les mécanismes de leur protection.

The evolution of status: from general principles of EU law to EU values. The significance of EU values for the EU legal order

For a long time, universal standards for the EU itself and for the Member States were provided by general principles of law and special principles developed by the Union's legal system to ensure effective interaction with the Member States (for example, the principle of the supremacy (primacy) of EU law and its direct effect in relation to national law. These principles were examined in detail in the fundamental works of J. A. Winter,² A. Dashwood,³ P. Pescatore,⁴ G. De Búrca,⁵ T. Tridimas,⁶ A. von Bogdandy and S. Schill).⁷

2 Winter, J. A. (1972) Direct Applicability and Direct Effect – Two Distinct and Different Concept in Community Law. *Common Market Law Review*. Vol. 9. P. 425–438.

3 Dashwood, A. (1978) The Principle of Direct Effect in European Community Law. *Journal of Common Market Studies*. Vol. 16. P. 229–245.

4 Pescatore, P. (1983) The Doctrine of Direct Effect: An Infant Disease of Community Law. *European Law Review*. Vol. 8. P. 155–177.

5 De Búrca, G. (1992) Giving Effect to European Community Directives. *Modern Law Review*. Vol. 55. P. 215–240.

6 Tridimas, T. (1994) Horizontal Effect of Directives: A Missed Opportunity? *Environmental Law Review*. Vol. 19. P. 621–636.

7 Von Bogdandy A., Schill, S. (2011) Overcoming Absolute Primacy: Respect for National Identity under the Lisbon Treaty. *Common Market Law Review*. Vol. 48, No. 5. P. 1417–1454.

However, with the Lisbon reform of 2007, certain general principles of law that, in the EU's view, are of a foundational nature were separated into a distinct category – EU values. In fact, the Lisbon reform merely gave legal form to what had long been crystallizing in the EU legal order under the influence of enlargement. This thesis should be explained in more detail.

The European Communities were a project designed for the states of “old Europe”, which had stable and developed democratic institutions and therefore spoke the same language when it came to understanding the basic rules of social and political life. However, with the eastern enlargement of the Communities, states that had long been under totalitarian regimes and were only returning to their democratic roots began to fall within the orbit of integration. As a result, the level of trust in them was not particularly high. In the view of the European institutions, this problem and the division between old democracies and post-communist countries could be overcome and Europe united through a strict process of screening candidate states for their compliance with certain standards. These standards were the fundamental principles common to all the constitutional traditions of democratic states. In this way, a customary law of EU enlargement took shape.⁸

This customary law consisted in screening candidate states for compliance with the principles of democracy, human rights and the rule of law. The most interesting point is that these unwritten customary criteria emerged before these principles were enshrined in the founding Treaties. They were only finally inserted into the Treaties after the creation of the EU in 1992.

A very interesting observation was made by Dimitry Kochenov, who notes that, prior to the creation of the EU, the invitation to join the Union was addressed to “free European states”.⁹ In the literature at that time this term was interpreted as meaning that a state had to be committed to democracy, the rule of law and human rights, combined with a capitalist economy.¹⁰ This interpretation fully corresponds to the trend towards the formation of a value-oriented Union, concerned not only with the internal market but also with the establishment of high democratic standards. At the same time, these standards are binding not only on the Member States, but also on the Union itself and its institutions, which, with the creation of the European Union, acquired a large volume of new competences.

Subsequently, the Amsterdam and Nice Treaties added to the founding Treaties specific mechanisms for protecting these fundamental principles, which have been preserved to this day in the form of mechanisms for protecting EU values. Thus, Article 2 TEU in its current version lists as EU values respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These values are

8 Kochenov, D. (2005) EU Enlargement Law: History and Recent Developments: Treaty – Custom Concubinage? Vol. 9(6) EIoP 1.

9 Kochenov, D. (2004) ‘Behind the Copenhagen Façade: The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law’. Vol. 8(10) EIoP, P. 1.

10 Puissechot, J.-P. (1975) The Enlargement of the European Communities. A Commentary on the Treaty and the Acts Concerning the Accession of Denmark, Ireland and the United Kingdom (Leiden: Sijthoff)? Hillion, C. (2016) Overseeing the Rule of Law in the EU: Legal mandate and means’. *European Policy Analysis*. Vol. 1. P. 1-16.

common to all Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The evolution of the status of the above-mentioned principles and their elevation to a separate value-based level underscores their particular significance for the human person and for the European Union itself. However, we are not dealing solely with moral guidelines for states and for the EU.¹¹ In its judgment in *Hungary v Parliament and Council*, the Court of Justice stated that “Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values that form an integral part of the very identity of the European Union as a common legal order. Those values are given concrete expression in principles containing legally binding obligations for the Member States”.¹²

These specific values allow the internal market without internal frontiers to function fully and effectively. For example, the free movement of goods, services, capital and workers is impossible without trust in the judicial systems of the Member States and confidence in their independence, since market participants must have guarantees that they will receive the same level of judicial protection regardless of territorial jurisdiction. Likewise, a lack of institutional capacity in a state to build democracy makes it impossible to effectively implement the EU *acquis* into the national legal system, and therefore the state will be unable to apply the entire body of EU law.

Values play an even greater role in the area of freedom, security and justice. For instance, the independence of the judiciary as a component of the rule of law is crucial for the mutual recognition of judgments in criminal matters and for the execution of the European Arrest Warrant.

EU Values in the Case-law of the Court of Justice: Doctrinal Developments and Trends

To understand these values, attention must be paid to the case-law of the Court of Justice of the EU, which has a monopoly on the interpretation of EU law, and therefore clarifies the content of these values. The Court has devoted particular attention in its case-law to the value of the rule of law, since its judgments are often a reaction to violations occurring in the Member States. It can already be said with confidence that the Court’s growing body of case-law has developed in response to the rule of law crises in Poland and Hungary and to the Commission’s inability to resolve these situations in the pre-litigation stage.

It is noteworthy that the Court of Justice has always highlighted judicial independence as an important element of the rule of law. As early as 1986, in *Les Verts v Parliament*, the Court noted that “the European Community is a community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of whether the measures adopted by them are in conformity with the basic

11 See, *inter alia*, Closa, C. and Kochenov, D. (eds), (2016) *Reinforcing Rule of Law Oversight in the European Union* (Cambridge: CUP).

12 Judgement of the Court of Justice *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97, para. 23.

constitutional charter, the Treaty. Individuals are therefore entitled to effective judicial protection of the rights they derive from the Community legal order".¹³

The Court links judicial independence to the principle of mutual trust and the possibility of effective implementation of EU law by Member States. It should be added that the Union has limited powers to legislate on the rule of law, but under Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the EU the Member States are under an obligation to exercise their powers in a manner consistent with the fundamental principles of EU law. Through this obligation, the Court can interpret, and the Union can require Member States to respect EU values, which form part of the general principles of law set out in EU primary law.

Returning to the case-law, the rule of law crises in Poland and Hungary were mainly linked to restrictions on judicial independence, which is extremely symptomatic, as attempts to restrict rights and freedoms usually begin with establishing control over the judiciary. Accordingly, most of the Court's judgments on the rule of law concern the interpretation of the principle of judicial independence.¹⁴

Many of the Court's judgments on the Polish judicial system are precedents in nature, providing a general interpretation of principles and thus are undoubtedly of interest to Ukrainian lawyers, as they can be used in the Ukrainian legal system in defining the content of the principle of judicial independence as a component of the broader principle of the rule of law.

In case C-192/18 *Commission v Poland*, the Court in November 2019 delivered a judgment finding that Poland had violated judicial independence.¹⁵ The violation consisted in systemic changes to Polish legislation: different retirement ages for male and female judges and prosecutors, lowering of the retirement age, and granting the Minister of Justice discretionary powers to extend service beyond that age.

The Court held that the provisions of Polish national law providing for different retirement ages for male and female judges were contrary to EU law, which establishes the principle of equal pay for male and female workers for equal work (Article 157 TFEU and Articles 5(a) and 9(1)(f) of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation).

The Court found that Poland had failed to fulfil its obligations to ensure, at national level, effective legal remedies in the fields covered by EU law and the right to a fair trial (Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights). The violation lay in the lowering of the retirement age while giving the Minister of Justice discretionary powers to extend the mandates of judges, without that discretion being circumscribed by any criteria and without the possibility of judicial review. The Court held that the value of the rule of law includes the state's obligation to guarantee adequate legal remedies for the protection of individuals' rights. To this

13 Judgement of the Court of Justice *Les Verts v Parliament*, 294/83, ECLI:EU:C:1986:166, para. 23.

14 The main decisions of the CJEU: Lazowski A., Komarova T. (2024) Case-law of the Court of Justice of the European Union on the Rule of Law and Its Significance for Ukraine: A Handbook. <https://www.pravojustice.eu/storage/app/uploads/public/669/8c7/833/6698c7833db83422117737.pdf>.

15 Judgement of the Court of Justice *Commission v Poland*, C 192/18, EU:C:2019:924.

end, the state must ensure a comprehensive system of legal remedies and procedures guaranteeing judicial independence. This is not only a principle of EU law, but also an EU value derived from the common constitutional traditions of the Member States, as confirmed in Article 47 of the Charter.

The Court elaborated in detail the criteria of judicial independence, which include external and internal aspects.

The external aspect requires that the court exercise its functions entirely autonomously, free from any hierarchical constraints, subordinate to no other body, receiving no orders or instructions from any source, thus being protected from external interference or pressure capable of influencing the independent judgment of its members. Freedom from external interference also requires guarantees of irremovability of judges (protection against unlawful removal from office).¹⁶

Although this principle is not absolute, any exceptions must be based on legitimate and persuasive grounds and must comply with the principle of proportionality. In the Polish situation, independence means that the rules governing the disciplinary regime must include all necessary safeguards to prevent disciplinary proceedings from being used as a system of political control over the content of judicial decisions.

Important guarantees of judicial independence are therefore rules that clearly define the grounds for disciplinary proceedings, as well as the possibility for a judge subject to such proceedings to exercise the right of defence and to appeal disciplinary decisions. Given the importance of the principle of irremovability, exceptions are permissible only where they pursue a legitimate aim, are proportionate, and do not give rise to reasonable doubts in the minds of individuals as to the independence of judges.

The internal aspect of independence is linked to impartiality and aims to ensure distance between the court and the parties to the proceedings. It requires objectivity and the absence of any interest in the outcome of the case other than the proper administration of justice.

Guarantees of independence and impartiality require rules on the composition of the court, the procedure for the appointment of judges, their tenure and grounds for dismissal, which dispel any reasonable doubts as to the court's immunity from external factors and the neutrality of the judge.

In *Commission v Poland* the Court found that independence was not guaranteed because the Minister of Justice's discretion in extending judges' mandates after retirement age was not constrained by legal criteria and the judges had no possibility to challenge the Minister's decision.

The judgment analysed above is one of a series of cases brought by the Commission against Poland in connection with large-scale judicial reform. In June 2019, in *Commission v Poland (Independence of the Supreme Court)*,¹⁷ the Court had already found the provisions of Polish law which lowered the retirement age of Supreme Court judges and granted the President a broad discretion to extend their mandates

16 Judgement of the Court of Justice *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, C-64/16, ECLI:EU:C:2018:117.

17 Judgement of the Court of Justice *Commission v Poland*, C-619/18, EU:C:2019:531.

after retirement to be unlawful. The situation arising from the reform constituted a real “rule of law crisis”.¹⁸

In November 2019 the Court delivered another judgment in response to three joined preliminary references from the Polish Supreme Court raising issues similar to those in *Commission v Poland*,¹⁹ concerning the independence of the National Council of the Judiciary. The Court again found that Poland had violated the EU value of the rule of law.

The Court interpreted the principle of irremovability as one of the guarantees of judicial independence, noting that the National Council of the Judiciary in its new composition had been formed by shortening the four-year term of office of its previous members, which constituted a breach of the irremovability principle.

Another fundamental breach was that the fifteen judicial members of the National Council of the Judiciary, previously elected by the judiciary, are now appointed by the legislature. As a result, the number of Council members appointed by political bodies reached 23 out of 25, contrary to Council of Europe standards.

A further violation was that the President's decisions appointing Supreme Court judges were not subject to judicial review, which made it impossible to verify whether there had been any excess or misuse of powers, errors of law or manifest errors of assessment.

This judgment demonstrates that all possible legal mechanisms were activated to protect the rule of law. In addition to the infringement proceedings brought by the Commission, the Court of Justice received preliminary references from Polish courts seeking to resist the arbitrariness of the ruling party.

In 2018 the Supreme Administrative Court of Poland also referred questions to the Court concerning the procedure for appointing Supreme Court judges and the possibility of challenging the relevant decisions. The Grand Chamber held that the new Polish legislation violated EU law because decisions of the National Council of the Judiciary refusing to recommend candidates to the Supreme Court could not be appealed. This might be problematic where all the contextual factors characterising the appointment procedure give rise to systemic doubts about the independence and impartiality of the appointed judges.²⁰

Thus, parallel proceedings were initiated before the Court under different procedures and by different actors, all pursuing the same objective – to put an end to the arbitrary restriction of judicial independence in Poland, which cannot be considered merely an internal problem but constitutes a Europe-wide challenge. This was clearly understood by judges in all Member States, as they are an integral part of the

18 Matczak, M. (2020) The Clash of Powers in Poland's Rule of Law Crisis: Tools of Attack and Self-Defense. *Hague J Rule Law*. URL : <https://doi.org/10.1007/s40803-020-00144-0>, Grzeszczak, R; Karolewski, I. P. *The Rule of Law Crisis in Poland: A New Chapter*, *VerfBlog*. 2018/8/08. URL : <https://verfassungsblog.de/the-rule-of-law-crisis-in-poland-a-new-chapter/>.

19 Judgement of the Court of Justice *A. K. and Others*, C 585/18, C 624/18 i C 625/18, EU:C:2019:982.

20 Judgement of the Court of Justice *A.B., C.D., E.F., G.H., I.J. V Krajowa Rada Sądownictwa*, C-824/18, ECLI:EU:C:2021:153.

European judicial system and are tasked with effectively applying EU law, which is impossible without mutual trust.

Member States also joined the struggle to protect judicial independence and to encourage Poland to respect the rule of law. Although we have not seen direct actions brought by Member States against Poland, almost all preliminary ruling proceedings involved various Member States as interested parties submitting observations. The most proactive, however, were the courts themselves. The Irish High Court refused to execute three European Arrest Warrants issued by Polish courts due to the risk of denial of justice to the requested person and a violation of Article 6 of the European Convention on Human Rights. The case reached the Court of Justice as case LM.²¹ The requested person was wanted for prosecution for serious offences, including drug trafficking. The High Court relied on the fact that Article 7 TEU proceedings had been initiated against Poland, infringement proceedings were under way, and there was abundant evidence of attacks on judicial independence.

The Irish court expressed distrust towards the independence of the Polish judiciary and sought to make an exception to the principle of mutual trust underpinning the recognition and execution throughout the EU of European Arrest Warrants. The Court of Justice supported the Irish court's position, holding that Article 1(3) of the Framework Decision on the European Arrest Warrant requires the executing judicial authority, when deciding on surrender, and where it has material (such as reports adopted under Article 7 TEU) indicating a real risk of a breach of the fundamental right to a fair trial, to seek additional information from the issuing authority.

This judgment is unprecedented, as it established an additional ground for non-execution of a European Arrest Warrant that is not expressly provided for in the Framework Decision.

Similar doubts about the Polish courts in the context of the European Arrest Warrant were expressed by the Amsterdam District Court, which referred questions to the Court of Justice in the joined cases L and P.²² The Court emphasized that national courts should not automatically assume that in a state affected by a rule of law crisis all courts lack independence.

The executing judicial authority must, in each individual case, take into account systemic or general deficiencies affecting the independence of the judiciary of the issuing Member State, which may have arisen at the time of and after the issuing of the warrant, and assess the extent to which these deficiencies may affect the proceedings concerning the requested person after surrender.

The Political Accountability Mechanism under Article 7 TEU for Breaches of EU Values

In parallel with the judicial proceedings, a procedure to suspend certain of Poland's rights in the EU because of breaches of values was launched in 2017. This is the

21 Judgement of the Court of Justice PPU LM, C-216/18, ECLI:EU:C:2018:586.

22 Judgement of the Court of Justice L and P, C-354/20 PPU, C-412/20 PPU, ECLI:EU:C:2020:1033.

procedure under Article 7 TEU, which was intended as a special mechanism to protect values and was regarded as the “nuclear option” designed to deter potential violators.

This procedure was introduced as the highest form of political responsibility for Member States. It had never before been applied in practice, and the proceedings against Poland and Hungary are therefore unprecedented attempts to use it. At the same time, these situations have exposed numerous problems and shortcomings of the procedure and, in fact, its dysfunction. The Commission proved unprepared for such brazen behaviour by a Member State and sent the formal reasoned proposal initiating Article 7 TEU proceedings against Poland only after two years of negotiations with the Polish government. As for Hungary, the procedure was triggered by another actor – the European Parliament – and again not swiftly; it took the Parliament about a year. Such a sluggish reaction did not enhance the weight of the EU's actions or its image as a defender of EU values.

The main problem of the procedure lies in the requirement that the European Council must decide unanimously in order to determine the existence of a serious and persistent breach by a Member State of EU values. This unanimity requirement has proved insurmountable and has clearly shown the need to reform Article 7 TEU.²³ This has become one of the main priorities for reform of the Union.

A new mechanism for protecting EU values

Having exhausted all available legal tools to influence Poland, the EU still failed to stop the violations of values, as Poland continued to curtail judicial independence, invoking national autonomy in shaping the judicial system and alleging EU interference in domestic competences. The EU found itself in a situation where it had no additional instruments of influence. This posed an enormous challenge to the Union and its authority. Rapidly amending the founding Treaties and overhauling the ineffective political responsibility procedure was not feasible, and so the Union resorted to other means. In December 2020 the European Parliament and the Council adopted a Regulation establishing a mechanism to protect the EU budget in case of breaches by a Member State of the principles of the rule of law.²⁴ To protect the EU budget, the Regulation allows the Council, on a proposal from the Commission, to

23 Blagoev B (2011) Expulsion of a Member State from the EU after Lisbon: political threat or legal reality. *Tilburg Law J* 16:191–237, Kochenov D. (2021). Article 7: A Commentary on a Much Talked-About ‘Dead’ Provision / *Defending Checks and Balances in EU Member States. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht* / von Bogdandy, A., Bogdanowicz, P., Canor, I., Grabenwarter, C., Taborowski, M., Schmidt, M. (eds). Vol 298. Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-662-62317-6_6, Pech L. ‘Article 7 TEU: From ‘Nuclear Option’ to ‘Sisyphean Procedure’?’, *Constitutionalism under Stress* / Uladzislau Belavusau, and Aleksandra Gliszczynska-Grabias (eds) (Oxford, 2020; online edn, Oxford Academic, 22 Oct. 2020). URL : <https://doi.org/10.1093/oso/9780198864738.003.0011>.

24 Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. *Official Journal. L 433I*, 22.12.2020, p. 1–10.

adopt protective measures, such as suspending payments from the EU budget or the implementation of budget-funded programmes.

Hungary and Poland brought actions before the Court of Justice seeking annulment of the Regulation, arguing that EU Treaties provided no proper legal basis and that the EU had exceeded its competences, and also claiming a breach of the principle of legal certainty because the Regulation did not define the concept of the rule of law. Given the fundamental nature of the questions, the cases were assigned to the Grand Chamber.

In its judgment, the Court held that the Regulation aims to protect the Union budget from consequences caused by breaches of the rule of law and cannot be regarded as a punishment for such breaches; the act therefore has an adequate legal basis.²⁵ The procedure laid down in the Regulation can be triggered only where there are reasonable grounds to consider that there have been breaches that directly affect or seriously risk affecting the sound financial management of the Union budget or the protection of the Union's financial interests.

Importantly, the Court stressed that compliance by the Member States with the common values on which the EU is founded determines the EU's identity as a legal order common to those states. Respect for EU values guarantees mutual trust between the Member States. EU values are a condition for enjoying all the rights deriving from the Treaties, and therefore the Union must have the means to protect them within the limits of its powers. By failing to respect the rule of law, a Member State may undermine the Union's financial interests and the sound financial management of the budget, which entitles the Union to protect them.

The Court made a crucial finding that compliance with EU values is not confined to an obligation that a candidate state must fulfil in order to accede to the Union and may then disregard once it has become a member (the principle of non-regression as formulated in *Republika*).²⁶

Equally important is the Court's response to the argument of Hungary and Poland alleging a breach of legal certainty due to the undefined content of the rule of law. The Regulation indeed does not provide a definition of the rule of law, but its source lies in the common constitutional traditions of the Member States, all of which share the concept of the rule of law. The Court held that the Member States can determine with sufficient precision the essential content and requirements arising from each of the principles concerned.

This judgment is undeniably a significant step in strengthening the rule of law in the Union. The actions of Hungary and Poland seeking annulment of the Regulation were dismissed in their entirety, and the Court confirmed the validity of the Regulation. Conceptually, by adopting this Regulation and applying a new mechanism for protecting values, the EU has opened the door to the introduction of other conditional measures with horizontal effect.

The EU's tough financial response to violations of its value, combined with the change of government in Poland, produced results: in May 2024 the Commission

25 Judgement of the Court of Justice *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97.

26 Judgement of the Court of Justice *Republika*, C 896/19, EU:C:2021:311.

suspended the Article 7 TEU proceedings against Poland. The new Polish government adopted an Action Plan to restore judicial independence in the country, and the Commission continues to monitor the situation.

The situation in Hungary still is very problematic.²⁷ On November 5, 2025 on its extraordinary meeting the European Parliament's Committee on Civil Liberties adopted the second interim report regarding the procedure under Article 7 of the Treaty on the EU. According to the report, the situation in Hungary "poses a threat to all the values of the European Union and its rule of law", it is emphasized that democracy no longer exists in the country, which has turned into a "hybrid regime of electoral autocracy".²⁸

The External Dimension of EU Values: Conditionality and Cooperation with Third Countries

As regards third states, a deep understanding of these values is extremely important, since the Union develops special relations with neighbouring countries precisely on the basis of values. Most bilateral agreements with third countries include a clause on respect for EU values.

Respect for values is a decisive factor determining the future success of integration, the deepening of relations with the European Union, and the extent of financial support available for domestic reforms. The EU's engagement with partner and candidate states is fundamentally conditioned by their commitment to the Union's core values.²⁹ Adherence to the EU values not only serves as a criterion for political legitimacy and institutional trust but also functions as a precondition for accessing the full range of EU instruments, including financial assistance, sectoral cooperation, and participation in internal market mechanisms.

Consequently, sustained respect for the EU's normative foundations ensures credibility in the integration process, reinforces the country's image as a reliable partner, and directly influences the Union's willingness to allocate resources aimed at supporting systemic reforms and strengthening the rule of law.

Where a state seeks accession to the European Union, one of the essential conditions for membership – alongside economic capacity, administrative readiness, and institutional stability – lies in its genuine respect for, and active commitment to, the values of the Union. These values, now enshrined in Article 2 TEU, were first articulated as part of the Copenhagen criteria,³⁰ which for the first time treated respect

27 See, *inter alia*, Koray K, 'The limits of EU rule of law financial sanctions: how economic and political costs shaped Hungary's selective compliance strategy' (2025) 32 *Journal of European Public Policy*.

28 https://www.europarl.europa.eu/doceo/document/A-10-2025-0231_EN.html.

29 See, *inter alia*, D Kochenov, *EU Enlargement and the Failure of Conditionality. Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (Kluwer 2008).

30 For legal analysis of Copenhagen criteria and comparative study of its application to Ukraine, Moldova, Georgia and Western Balkans see, *inter alia*, A Hoxhaj, 'How to make EU enlargement a fairer and merit-based process: A legal and policy analysis' (2024) 30 *European Law Journal* 571.

for democracy, the rule of law, human rights, and minority protection not merely as political aspirations but as binding elements of the EU *acquis*.³¹

In the context of enlargement, compliance with these criteria has evolved into a multidimensional test of a state's democratic maturity and its ability to integrate into the Union's legal and political order. The EU does not regard respect for values as a purely declarative or formal obligation; rather, it is assessed through the consistency of domestic constitutional arrangements, judicial independence, and the protection of fundamental rights in practice. Moreover, the promotion of EU values – both internally and in external policy – serves as evidence of a candidate state's alignment with the Union's normative identity.

Hence, Article 49 TEU establishes a dual obligation for aspiring members: not only to respect the values upon which the Union is founded, but also to actively advance and safeguard them within their national systems. This approach reflects the EU's understanding of enlargement as a transformative process, in which candidate states undergo profound constitutional and institutional adaptation to meet the standards of a value-based legal community rather than merely acceding to an economic bloc.

EU values in EU–Ukraine relations

The Constitution of Ukraine enshrines the country's civilizational choice and the irreversibility of its strategic course towards full membership of Ukraine in the EU (Articles 85, 102, 116). It also confirms the European identity of the Ukrainian people and the irreversibility of Ukraine's European and Euro-Atlantic course (Preamble). In this context it is important to note that, since the amendments were made *inter alia* to the Preamble of the Constitution, this means that the European direction of Ukraine's integration provides the framework for interpreting the Constitution. It is generally accepted that preambles, so to speak, set the tone for the subsequent constitutional text and thus can serve as a guiding star for interpreting the Constitution. Preambles guide the activities of state bodies and local self-government, associations of citizens, officials and citizens. They define the general line of law-making activity and indicate the strategic direction of constitutional and legislative regulation as a whole.

This is crucial, because it imposes on all public authorities the duty to take into account the European and Euro-Atlantic vector of our state. At the same time, one must be careful not to speak of an obligation to take into account the entire body of the EU *acquis*, as such an obligation can only be placed on EU Member States. However, there is definitely an obligation to take into account EU values. Therefore, the issue of EU values is decisive for the Ukrainian legal system.

A milestone in EU–Ukraine relations was the entry into force in 2017 of the Association Agreement between Ukraine and the EU (hereinafter – the Association

31 Lazowski, A. (2022) Strengthening the rule of law and the EU pre-accession policy: *Republika v. Il-Prim Ministru*. *Common Market Law Review*. Vol. 59 (6) P. 1803–1822.

Agreement),³² which marks a new stage in the deepening of integration.³³ But Ukraine's legal transformation in the context of European integration began before the formalization of deep partnership through the Association Agreement, which later became a cornerstone of the national legal order. As early as 1994, soon after attaining independence, Ukraine became the first post-Soviet country to sign a Partnership and Cooperation Agreement (PCA) with the European Communities.³⁴

Although the Agreement was politically significant, it did not establish legally binding obligations regarding the approximation of legislation. Instead, it embodied a shared political intention to launch a strategic dialogue with the Union, while refraining from requiring specific steps in legal harmonisation. The document envisaged a gradual intensification of trade relations, yet the institutional and legal mechanisms for creating a comprehensive free trade area remained rudimentary.

The PCA included a conditionality clause, linking the advancement of economic cooperation to the approximation of Ukrainian legislation with the *acquis communautaire* (Article 51).³⁵ It also identified seven priority areas of bilateral cooperation: energy, trade and investment, justice and home affairs, legislative approximation, environmental protection, transport, cross-border interaction, and collaboration in science, technology, and space.

However, the Agreement provided only general formulations within these domains. Most of its provisions were couched in soft-law terminology, lacking the precision or enforceability necessary to produce tangible outcomes. Consequently, its implementation yielded limited progress in Ukraine–EU relations. While the PCA alluded to democracy and the rule of law as shared objectives, it did not explicitly address the issue of EU values or establish mechanisms for their enforcement.

32 Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/3.

33 Van Elsuwege, P., Chamon, M. (2019) *The meaning of 'association' under EU law. A study on the law and practice of EU association agreements* (Brussels, European Parliament,) available at/ URL : [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608861/IPOL_STU\(2019\)608861_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608861/IPOL_STU(2019)608861_EN.pdf), Van der Loo, G. (2016) *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU integration without Membership* (Leiden-Boston, Brill Nijhoff), Petrov, R., Van der Loo, G., Van Elsuwege, P. (2015) *The EU-Ukraine Association Agreement : a New Legal Instrument of Integration Without Membership? Kyiv-Mohyla Law and Politics Journal. № 1. P. 1–19.*

34 Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine [1998] OJ L49/3.

35 These provisions are sometimes referred to as approximation clauses. For a comparative analysis of approximation provisions in European agreements, see: Adam Łazowski, 'Approximation of Laws', in A Ott and K Inglis (eds.), *Handbook on European Enlargement. A Commentary on the Enlargement Process* (The Hague, T.M.C. Asser Press, 2002), Roman Petrov, *Exporting the acquis communautaire through EU External Agreements* (NOMOS, Baden-Baden, 2011), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union Towards a Common Regulatory Space?* Edited By R Petrov and P Van Elsuwege (Routledge, 2014).

In 1998, Ukraine adopted its Strategy for Integration into the European Union,³⁶ which formally recognised the adaptation of national legislation to EU law as a key pillar of the integration process. This strategic act marked the first explicit step toward embedding European legal standards in Ukraine's domestic system. Two years later, the Programme for Ukraine's Integration into the EU was approved, outlining concrete priorities: consolidating political and social stability, ensuring the rule of law and human rights, and developing the institutional framework for a market economy in accordance with the Copenhagen criteria for EU membership.

But of course, the Association Agreement marked the beginning of far-reaching economic, political, and legal reforms. Article 2 of the Agreement enshrines, among the political objectives, the strengthening of respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, and non-discrimination as aims of the political dialogue between the Parties and as the basis of their internal and external policies – in essence, a reflection of EU values. Article 2 may thus be regarded as a “basic elements clause” of the Agreement, as will be discussed further below.

It should be noted that the Agreement is by its nature an agreement based on the principle of conditionality. This means that there is a direct link between Ukraine's fulfilment of its obligations under the Agreement and the further deepening of integration with the EU. For example, the Preamble to the Agreement provides that “the political association and economic integration of Ukraine with the European Union will depend on progress in the implementation of this Agreement as well as on Ukraine's respect for common values and its progress towards convergence with the EU in political, economic and legal areas”. To this end, the Parties carry out continuous assessment of the progress in implementing all the measures covered by the Agreement, i.e. monitoring (Article 476 of the Association Agreement).³⁷ The results of this monitoring determine, for instance, access of Ukrainian economic operators to the EU internal market.

Crucially, conditionality is based not only on the implementation of the specific provisions of the Agreement by Ukraine, but also on respect for common values. Article 478 of the Agreement provides that “a violation by the other Party of any of the essential elements of this Agreement, as defined in Article 2 of this Agreement, may be considered a ‘case of special urgency’ and may lead to the suspension of any rights or obligations under the provisions of this Agreement referred to in Title IV (‘Trade and trade-related matters’).”

An analysis of Article 2 shows that the “essential elements” of the Agreement are EU values:

“Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Final Act of the Conference on Security and Cooperation in Europe of 1975 and in the Charter of Paris for a New Europe of 1990, as well

36 Decree of the President of Ukraine “On Approval of the Strategy for Ukraine's Integration into the European Union” of 11 June 1998, No. 615/98. *Official Bulletin of Ukraine*, 1998, No. 24, P. 870.

37 For the deep analysis of the Ukrainian approximation process, see, *inter alia*, T Komarova and A Łazowski, ‘Switching Gear: Law Approximation in Ukraine After the Application for EU Membership’ (2023) 19 *Croatian Yearbook of European Law and Policy* 105.

as in other relevant human rights instruments, including the 1948 Universal Declaration of Human Rights and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and respect for the principle of the rule of law, shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement. Ensuring respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery shall also constitute essential elements of this Agreement.”

This article enshrines EU values as binding standards for Ukraine, the violation of which may lead to the suspension of the free trade area – one of the main achievements of the Agreement.

Another important dimension of the relevance of EU values for Ukraine is the country's recent acquisition of candidate status in 2022. This milestone places Ukraine within the formal framework of the EU enlargement policy, thereby subjecting it to the full range of accession criteria, including the explicit requirement to respect and promote the values enshrined in Article 2 of the Treaty on EU. Candidate status is not merely a political symbol of recognition; it carries substantive legal and institutional implications. It commits Ukraine to ensuring that its constitutional order, public administration, and judiciary are aligned with the Union's values. Moreover, adherence to these values is a condition for the effective implementation of reforms and for the continuation of financial and technical assistance from the EU. Thus, the respect for and internalisation of EU values become a decisive benchmark not only for assessing Ukraine's progress towards membership but also for determining the depth and quality of its future integration into the Union's legal and political space.

In May 2025, the Government of Ukraine approved Roadmaps on the Rule of Law,³⁸ Public Administration,³⁹ and the Functioning of Democratic Institutions,⁴⁰ which constitute one of the key prerequisites for opening negotiations under Cluster 1 “Fundamentals”. May 2025 also became a landmark moment with the announcement of the start of work on the National Programme for the Approximation of Legislation to EU Law—an overarching tool designed to replace all previous fragmented documents in the field of European integration. Its main objective is to establish a comprehensive and coherent plan that will enable the full harmonization of Ukrainian legislation with EU law. The Programme encompasses not only the formal transposition of EU legal acts, but also the institutional reforms necessary for the effective implementation of European standards. This approach will allow Ukraine not only to move closer to the EU but to introduce reforms in all relevant sectors in a more structured and impactful manner, in full alignment with the EU acquis.

38 https://eu-ua.kmu.gov.ua/wp-content/uploads/UA_Dorozhnya_karta_z_pytan_verhovenstv_a_prava_2.pdf.

39 <https://cutt.ly/Rrxg5mQM>.

40 <https://cutt.ly/0rxg5r9T>.

Conclusions

It can be stated with confidence that the rule-of-law crises in Poland and Hungary have been decisive for the development of contemporary standards of judicial independence within the European Union. These cases have simultaneously provided valuable guidance for both candidate countries and third states, including Ukraine, illustrating how the EU transforms abstract values into binding legal standards. In its judgment in *Repubblika*, the CJEU articulated the principle of non-regression, which prohibits Member States from departing from established rule-of-law standards once they have acceded to the Union. This principle has become a cornerstone of the Union's constitutional identity and a benchmark for evaluating the conduct of Member States.

When discussing accession to the EU, it must be clearly recognized that the Union respects the national identity of its Member States, as enshrined in Article 4(2) TEU. This provision grants a degree of discretion in the implementation of EU values, reflecting the diversity of constitutional traditions across Europe. However, such discretion does not exempt states from the duty to uphold and safeguard those values. As the case of Poland has demonstrated, appeals to national identity cannot serve as a legitimate justification for derogating from the foundational principles of the Union. EU values are not merely political or ethical aspirations; they represent legally binding obligations that structure the relationship between the Union and its members and form the normative basis of the European legal order.

For Ukraine, this conclusion bears particular significance. As the country pursues its strategic objective of full EU membership, respect for and implementation of EU values — notably democracy, the rule of law, human rights, and good governance — become essential criteria for integration. These values already underpin Ukraine's relationship with the Union under the EU–Ukraine Association Agreement, whose Article 2 defines respect for democratic principles, human rights, and the rule of law as “essential elements” of cooperation. Their observance directly affects the depth of political association, economic integration, and access to EU financial support.

Incorporating EU values into Ukraine's legal and institutional framework thus serves not only as a matter of political choice but as a constitutional imperative guiding the transformation of the state and its legal order. The enshrinement of Ukraine's European identity and Euro-Atlantic course in the Constitution affirms this direction, requiring that all branches of power act consistently with the European vector of development. Respect for EU values therefore determines the credibility of Ukraine's European integration, the sustainability of reforms, and the level of trust and partnership it enjoys with the Union.

Ultimately, the EU's experience demonstrates that the strength of the integration project depends not merely on economic interdependence, but on a shared commitment to common values. For Ukraine, aligning with these values is both a prerequisite for accession and a foundation for the renewal of its democratic institutions and legal culture. The genuine internalization of EU values will ensure that Ukraine's future integration into the Union is not only a geopolitical act, but also a profound legal and civilizational transformation.