NATIONAL UNIVERSITY OF PUBLIC SERVICE
Doctoral School of Public Administration

Ákos Bence Gát

A Comprehensive Legal and Political Science Analysis of the Development of the European Union's Policy on the Rule of Law

PhD dissertation

THESES OF PHD DISSERTATION

PhD supervisor:

Dr. András Téglási

Budapest, 2021

1. THE RELEVANCE, AIM AND TOPIC OF THE RESEARCH

The rule of law has become a central issue in the European Union over the last decade. The EU's institutions, the Western European media, foreign experts and NGOs with international reach have regularly expressed criticism of certain EU Member States, including Hungary, citing a rule of law deficit and objecting to certain national laws and policy measures. The ongoing EU proceedings under Article 7 of the Treaty on European Union also make the issue of the rule of law particularly relevant.

The aim of this study is to review the ongoing rule of law debate in the European Union from an academic standpoint. The analysis shall especially concentrate on exploring the dynamics of the debate, as well as its legal, political science and institutional aspects. Its goal is not to take sides in specific legal disputes that have arisen in the last decade involving Hungary; instead, it examines the European rule of law phenomenon in all its complexity, by introducing the notion of "European policy on the rule of law" as a new European policy. It articulates observations supported by academic reasoning for the whole of the EU's policy on the rule of law, covering legal, logical and worldview differences underlying the policy on the rule of law, or manifesting as its consequence. The notion of the rule of law, at the centre of the new European policy, is examined in the introductory part of the dissertation. The emphasis, however, is not on the issues surrounding the theoretical definition of the rule of law, nor on the examination of its criteria in legal science; the analysis concentrates instead on the European policy built around it.

Most analyses on the EU-level rule of law control of Member States accept the axiom that the rule of law is in danger in certain Member States, and that the European Union needs to react to such danger. For this reason, these works usually concentrate on the instruments the EU could use against Member States "breaching the rule of law" and essentially only differ from one another in the tools they prefer. Unlike the latter, I use a different approach in my dissertation; I analyse the rule of law debate from a broader perspective and in a comprehensive manner, thus shedding light on several, lesser-known interrelations.

2. THE METHODOLOGY OF THE DISSERTATION

My research is based on multidisciplinary foundations, I use the tools of legal and political science analysis in my dissertation. *Inter alia*, I analyse the appearance and evolution of the notion of the rule of law in the EU Treaties. Both a historical and a retrospective comparative method are used for this legal examination, in order to place the European policy on the rule of law into a rigorous legal context.

I use the legal comparative method in later parts of the dissertation as well. During the examination of the issue of rule of law conditionality, I compare the Commission's original proposal with the adopted regulation and the European Council's interpretative conclusions related to this regulation. This method allows for the academically rigorous identification of the

most important legal and political issues regarding this regulation, as well as the compromises made and the subsisting contradictions in this matter.

I also analyse the case law of the Court of Justice of the European Union regarding the policy on the rule of law; I draw logical conclusions directly from the Court decisions, their chronological evolution, and their comparison, through inductive reasoning. I illustrate the evolution of EU case law on the issue of the rule of law by organizing the analysed court decisions into categories.

In general, I often conduct a grammatical and logical analysis of the legal and soft law instruments of EU institutions. The descriptive parts serve to create a factual legal basis for my independent, critical observations later on.

In the study I also frequently apply the methods of political science analysis. In choosing the political science tools used in the dissertation, I heavily relied on my political science studies from the joint cursus of the University of Paris 1 Panthéon-Sorbonne and the École Nationale d'Administration (National School of Administration - ÉNA) in France. A defining starting point in the aforementioned studies was the finding that in order to understand the European Union, having a thorough legal knowledge of the latter was not sufficient: knowing the political weight, interests, and power relations of the institutional, political and all other stakeholders in a broad sense that are making and applying the law, was also essential. The evolution of certain policies is shaped by a competition and ever-changing power dynamics between numerous stakeholders, which can be efficiently analysed with the help of the field theory (*"théorie des champs"*) developed by Pierre Bourdieu[1], modelling the coalition of different agents regarding a given policy.

Based on this consideration – in order to give a realistic academic portrayal of the EU's policy on the rule of law – I placed special emphasis in the dissertation on the groups defining the evolution of the policy on the rule of law, their internal composition, dynamics, interactions, as well as the power relations between the different groups depending on the chosen European or national scene.

Patrick Hassentaufel's book detailing the methodology of policy analysis has also been an important source of methodological inspiration for my analysis of the policy on the rule of law.[2] According to Hassenteufel, the three most important questions of policy analysis are: why a policy is created, how stakeholders act, and what impact the actions of institutions entrusted with public power have.[3] In order to understand a policy, its bases, motivations, explicit or implicit aims, tools for action and subjects all need to be examined. In terms of the development of a particular policy, special attention needs to be given to when and how the issue that serves

[1] Pierre Bourdieu: Propos sur le champ politique. Presses universitaires de Lyon, Lyon, 2000.
[2] Patrick Hassenteufel, *op. cit.*
[3] *Ibid.* p. 9

as its basis was articulated, when and in which circumstances was it put on the political agenda,[4] what decisions have been made in its name and how the latter were implemented in practice.[5] In terms of policy analysis, the issue to be solved, to which the policy refers to, can never be considered given or self-evident. The issue starts existing from the moment that one or more stakeholders define it.[6] The media can have a special role in creating issues of this kind,[7] since it can help to present to the public a given phenomenon in a dramatized way[8]. My dissertation deals with the context and milestones of the EU-level problematization of the rule of law based on these methodological considerations. I also cite press articles in the dissertation, which play a dual role. On the one hand, they help to document certain milestones in the genesis on the policy on the rule of law, on the other hand, they also illustrate the role the media plays in the construction of the European policy on the rule of law.

According to Hassenteufel, in order to understand a given policy, the actors shaping the policy – including public (state) and non-public actors as well – need to be studied in the broadest possible way.[9] The particular policy is the common construction of the actors interacting with each other,[10] therefore that interaction itself needs to be examined as well.[11] It needs to be observed, how actors identified in such way compete with each other, in order to be able to align the implementation of the policy with their own interests.[12] As stated before, I also undertake the examination of the actors from such a perspective.

Finally, the symbolic elements of the given policy have to be considered as well during a policy analysis; the different speeches, important communiqués, announcements and messages also have to be included in the analysis.[13] In addition, the shared belief systems[14] assembling stakeholders into coalitions along the lines of the studied policy need to be paid attention to as well.

Regarding the sources, I rely on the analysis of both primary and secondary sources. I analyse a wide range of EU Treaties, legislation, other legal and "soft law" instruments, communications, resolutions and experts' reports. In addition to the documents of the EU's institutions, relevant documents of other international organizations are examined, in particular, those of the Venice Commission of the Council of Europe, as well as the expert and policy material produced by different civil organizations. Moreover, to prepare this dissertation, I tried

[4] *Ibid*. p. 9 and p. 43
[5] *Ibid*. p. 9
[6] *Ibid*. p. 43
[7] *Ibid*. p. 43
[8] *Ibid*. p. 51
[9] *Ibid*. p. 19, p. 187
[10] *Ibid*. p. 115
[11] *Ibid*. p. 151
[12] *Ibid*. p. 110
[13] *Ibid*. p. 37
[14] *Ibid*. p. 121

to process the Hungarian, as well as the French and English academic literature on the rule of law, in particular on its aspects relevant to my research topic.

In the initial stage of my research I conducted in-depth interviews on the topic of the European policy on the rule of law with twenty Hungarian and international experts and politicians from different political and institutional backgrounds.[15] I included the list of interviews in the annex to the dissertation but, respecting the wishes of the majority of interviewees, I integrated the information I gathered from said conversations into the dissertation without making specific references or naming the interviewees.

Finally, I also heavily relied on my own professional experience for the writing of the present dissertation. During my university studies abroad, from the beginning of the 2010s, I could closely monitor the evolution of political and public law disagreements between Hungary and the European Union. During my work in the different areas of the European Parliament, I could witness first-hand the functioning of the European institutions and of their underlying political logic. Due to my work in the Hungarian Ministry of Justice, I am well aware of the official position of Hungary on this issue.

2. RESEARCH QUESTIONS AND HYPOTHESES

I am looking to answer the following main research questions in my dissertation:

1st research question: When, how and through whose actions has the protection of the rule of law within the European Union become a policy issue at EU-level?

1st hypothesis: Current political discourse paints the European rule of law control as an original, fundamental duty of the European Union. According to my hypothesis however, such presentation of the matter is not supported by the legal history of the European Union. The European protection of fundamental rights has evolved for a long time before it has become what it is today. The issue of the EU-level rule of law control over Member States mostly gained central place on the EU's institutional and policy agenda in the special political context of the 2010s, in which the political and institutional actors of today played a determining role.

2nd research question: Which have been the milestones in the development of European policy on the rule of law?

2nd hypothesis: The political actors and institutions of the European Union have continuously kept the issue of the European rule of law control over Member States on the agenda since 2010. They developed, step by step, an institutional toolkit for this purpose, the main elements of which include: the 2014 rule of law framework of the Commission, the rule of law dialogue of the Council, the Commission's annual rule of law report and, to a certain extent, the currently debated budgetary rules of conditionality.

[15]The annex to the dissertation contains the exhaustive list of interviewees.

3rd research question: What political groups, underpinned by what political interests and views have shaped the European policy on the rule of law?

3rd hypothesis: The classic, political right-left divide has played an important role in shaping the emersion of the policy on the rule of law. Beyond the competition between European political parties and their national member parties, the evolution of the policy on the rule of law is also significantly influenced by the conflict of interests between the national and supranational levels, as well as the individual political and institutional interests and power struggles.

4th research question: What role does the Court of Justice of the European Union play in the construction of European policy on the rule of law?

4th hypothesis: In the beginning, the Court of Justice of the European Union did not explicitly participate in European debates regarding the rule of law. A few decisions were made in the early 2010s, which had an indirect connection to these debates, but there was no case law regarding the state of the rule of law in Member States specifically. This changed at the end of the 2010s; the Court rendered several judgements, showing that, through the development of its case law, it was becoming an increasingly active agent in the rule of law debates.

5th research question: How do the different communication narratives (political framing models) related to the policy on the rule of law reflect the competition between the respective political groups?

5th hypothesis: The current debate unfolding in the European political arena can be interpreted from several aspects. Depicting the ongoing debate in the European Union as a "rule of law" debate is only one of the possible narratives, which only reflects the approach of one of the groups involved in the debate. The other party essentially interprets the same European debate as a debate on the importance of national sovereignty and on the issue of immigration.

6th research question: What are the political fault lines between these competing communication narratives?

6th hypothesis: The European debate described by rule of law, national independence, or immigration narratives, can be traced back to profound differences in principles, worldview and values that divide the European Union. The position stakeholders take in the debate is fundamentally determined by their approach to national sovereignty, federalism, democracy, liberalism, and the source of legitimacy of political action.

3. THE EXAMINATION PERFORMED, PROVED THESES BY CHAPTER AND CONCLUSIONS

After examining the above hypotheses in detail, I prove in my dissertation the thesis that the EU's different political and institutional stakeholders purposefully developed a new European policy through the political and legal debates surrounding the rule of law. Through the policy on the rule of law, the EU's institutions and the interest groups influencing their functioning seek to closely monitor the Member States, even on issues that do not fall within the competence of the European Union, and therefore the existing EU-tools would not apply to them.

My 1st hypothesis, according to which the European rule of law control over Member States cannot be historically traced back to the original legal objectives of the EU, since it is a result of political and institutional manoeuvres in the present day, is proved in chapters 4 and 5. I present in chapter 4 that even though the creators of the policy on the rule of law designate the rule of law as one of the primal, historic foundations of the European Union, a reference to the rule of law only made it into the EU Treaties relatively late. The first references to the rule of law appeared in the Treaty of Maastricht but not in any shape or form that indicated the EU was deemed to control the situation of the rule of law in the Member States. Through the examination of legal history, I also highlight the fact that, in the decades that followed the Rome Treaty, it was the Member States' institutions that set requirements for the European institutions regarding the protection of fundamental rights. Until the 1990s, the major issue of the European protection of fundamental rights was to ensure that EU institutions respected the fundamental rights of the citizens. On the one hand, the problem was solved by the Court of Justice of the European Union by making the protection of fundamental rights part of EU law through its case law. On the other hand, references to European values and fundamental legal principles started to appear in the treaties and the Charter of Fundamental Rights of the European Union was born. A major change was brought about regarding the issue of the protection of fundamental rights by the Treaty of Amsterdam. This was the first time that a provision allowing for the examination of whether the Member States were respecting the fundamental values of the European Union was inserted into a Treaty. The Treaty of Nice also kept the mechanism – introduced in the Treaty of Amsterdam – that allowed for the determination of whether a Member State was seriously breaching the fundamental values of the EU, and it added to it another procedure; one which was already applicable when there was a *risk* of a serious breach of the values. These procedures can be found in Article 7 of the TEU, currently in force.

In chapter 5, I explain in detail that the inclusion of the procedures according to Article 7 in the Treaty would not in itself have led to the development of a policy on the rule of law. For the latter to happen, it was necessary for the rule of law debates to remain on the European policy and institutional agenda for a long time, for which the special political and public law context that characterized Hungary following the 2010 parliamentary elections provided a pretext. The Fidesz-KDNP party alliance won a two-third mandate from voters and began making swift

economic and legal reforms, one of the most illustrative examples of which was the adoption of the new Constitution called "Fundamental Law". The changes were harshly criticized by the Hungarian opposition and the European left-wing parties, and European institutions, international and civil organizations also greeted them sceptically. Debates regarding Hungary have become permanent in the European political and institutional space, as well as in international media outlets. First, the subject of the debates were certain governmental measures, in connection with which the EU's political institutions phrased concerns. Later, we witnessed debates which questioned in general if the rule of law prevailed in Hungary (and then in Poland) at all. Citing rule of law concerns has become a permanent element of general political criticism against the two countries' governments. In this way, the rule of law debates were permanently fixed on the EU's political agenda and allowed the creation of a new European policy around the concept of the rule of law.

My 2nd hypothesis, according to which the political and institutional actors of the European Union have continuously kept the issue of the European rule of law control over Member States on the agenda since 2010, and step by step, developed an institutional toolkit for this purpose, is substantiated, in addition to chapter 5 presented above, in chapters 6, 7 and 8. In chapter 6, I shed light on the fact that at first four Member States, then the European Parliament phrased recommendations on a European policy based on the notion of the rule of law that controlled the Member States. The Foreign Ministers of Denmark, Finland, Germany and the Netherlands wrote a letter on 6 March 2013 to the President of the European Commission, in which they asked for the development of new procedures allowing for the regular control of the rule of law, and they also envisaged financial sanctions as a final recourse against Member States "breaching the rule of law". It was not much later, on 3 July 2013, that the European Parliament adopted the resolution based on the Tavares report criticizing Hungary that also called on the Commission to create a new mechanism controlling the rule of law.

In chapter 7, I demonstrate in detail the rule of law controlling mechanisms and plans that were created following that, and I show how said mechanisms and plans relate to one another. In sub-chapter 7.1, I analyse, by comparing it to traditional infringement procedures, the rule of law framework the European Commission introduced on 11 March 2014. I demonstrate from a legal and political science perspective how the Commission, through its new tool referring to the rule of law, extended its capabilities to exert pressure over Member States to areas, which do not fall under the European Union's competence. In sub-chapter 7.2, I present the expert opinion of the Legal Service of the Council, according to which, by creating the rule of law framework, the Commission breached the foundations of EU law, since it thus created a control mechanism that had no legal basis in the Treaties. After this, I analyse the rule of law dialogue introduced on 16 December 2014 by the Council as an alternative to the rule of law framework of the Commission. I describe how this tool initially placed great emphasis on respecting the sovereignty of the Member States before it started following the general policy tendencies on

the rule of law and shifted towards a more in-depth examination of certain Member States. In sub-chapter 7.3, I examine the European Parliament resolution of 25 October 2016, which recommended to the Commission the establishment of an EU mechanism on democracy, the rule of law and fundamental rights. In this way, the European Parliament initiated the creation of a robust rule of law mechanism, examining every country, every year. The mechanism recommended by the Parliament would have granted less power to the Commission in comparison to the rule of law framework, but it would have significantly increased the role the Parliament would have played in rule of law examinations. In sub-chapter 7.4, I analyse the relationship between the rule of law mechanisms that the three institutions have introduced or would have wished to introduce, as well as their practical implementation or the reasons for their lack of implementation. I shed light, for example on the contradiction that the Commission categorically refused on 17 January 2017 the thought of an annual rule of law controlling mechanism recommended by the European Parliament, later however, on 17 July 2019, it announced the creation of an annual rule of law reporting system based on a similar principle. The new mechanism, which examines every Member State every year, bears a strong resemblance with the mechanism the Parliament advocated for earlier, with the difference that the annual Commission reporting continues to solidify the power in the hands of the Commission. I examine in detail the Commission's annual rule of law reporting system in sub-chapter 7.5, detailing as well, how the circumstances of its creation were linked to the electoral interests of certain political forces in the 2019 European Parliamentary elections. In chapter 8, I analyse in detail both from a legal and political science perspective the regulation on budgetary conditionality as a possible rule of law tool of the EU. By comparing the regulation that was eventually adopted with the Commission's original proposal for a regulation, and analysing the related conclusions of the European Council as well, I point out the dilemmas regarding its interpretation. I highlight the fact that the regulation, in theory, is supposed to serve the protection of the EU budget, however certain political forces wish to use it as an additional tool of financial sanction of the European policy on the rule of law developed in the 2010s. Through these, I discuss in detail the main milestones of the development of the EU's policy on the rule of law in my dissertation.

My 3rd hypothesis, according to which the classic right-left political divide and the conflicting interests of the national and supranational levels, as well as personal political and institutional interests and power struggles played a major role in the elaboration of the European policy on the rule of law, is in part already confirmed in chapters 6, 7 and 8. In chapter 13, I conduct mainly political science oriented further examinations, in the framework of which I draw up in detail the structure and main actors, as well as the internal dynamics and logic of functioning of the two opposing groups that formed around the policy on the rule of law. I determine, that not only has the opposition between the two groups – one supporting and one opposing the policy on the rule of law – affected the evolution and mode of implementation of said policy,

but the competition between the political and institutional actors within each group has also influenced it to a great extent. I present that the internal composition of the groups and their position in power are constantly evolving. Illustrating also by a figure, I point out that the power dynamics between the groups are different on the national and European scenes, which drives the opposing camps to find tools that would allow them to increase their influence on both scenes.

I substantiate the 4th hypothesis, according to which the attitude of the Court of Justice of the European Union towards rule of law debates has changed considerably in the past years, as a result of which the Court has also become an increasingly active agent of the policy on the rule of law, in chapters 9, 10, 11 and 12, in which I analyse and systematize the Court's case law on the rule of law. In chapters 9 and 10 I shed light on the fact that in the beginning, the Court stayed away from the European policy debates surrounding the rule of law. The court decisions examined in chapter 9, in relation to the lowering of the retirement age of judges and the independence of the data protection authority in Hungary, prove this point. Regarding their substance, these cases had a connection to the rule of law debates taking place in the European political scene, the Court however, did not make any reference to the rule of law in these decisions. This is all the more relevant, since – as I present it in chapter 10 – the Court had, in numerous other cases that did not have a connection to the rule of law debates, made reference to the principle of the rule of law. In chapters 11 and 12, I present that in the second half of the 2010s the case law of the Court underwent significant change. In that period several decisions were rendered, in which the Court has articulated with increasing clarity politically relevant messages regarding the state of the rule of law in Member States. In the AJSP case, the Court talked about, more in detail compared to its earlier decisions, the importance of judicial independence and of the criteria of its realization – and derived all this from the notion of the rule of law. The court decisions presented in chapter 12 prove that the Court started increasingly openly siding with the other European institutions at the end of the 2010s in the European rule of law debate surrounding the independence of Polish judges. What is more, it extended its case law into this direction while significantly increasing its powers in areas traditionally falling under the sovereignty of the Member States.

I substantiate the 5th hypothesis, according to which depicting the ongoing debate in the European Union as a "rule of law" debate only reflects the approach of one of the camps involved in the debate, and that the same European debate can be interpreted from a different perspective as a debate on the importance of national sovereignty and on the issue of immigration, in sub-chapter 14.1. I present how the rule of law narrative provides a competitive advantage to one of the groups participating in the European political debate, and how the other political group, attacked through this narrative, is constantly forced into a defensive position. After that I highlight, how the group attacked through the rule of law narrative can only effectively represent its position on the European political scene, if it steps out of the rule of

law narrative – inherently disadvantageous to it – and communicates its messages by using a different narrative both on national and European scenes. I demonstrate that an obvious counterpoint to the rule of law narratives demanding an increasingly close monitoring of the Member State politics, is a political discourse based on the safeguarding of Member States' national independence and their sovereignty. With the 2015 immigration crisis, which gained much attention both on the Member State and European levels as an issue being experienced by European citizens as well, has come to the forefront of European debates, and it managed to illustrate the discourse on sovereignty in a tangible manner. This provided an opportunity to effectively counterweigh the rule of law narrative, thus the parties could defend their views on a more equal footing in European debates.

I substantiate the 6th hypothesis, according to which the European debate described by the rule of law, national independence or immigration narratives can be traced back to profound differences in principles, worldview and values that divide the European Union, in sub-chapter 14.2. It is in this sub-chapter that I present the deeper debates of clashing principles, which are characteristic of the European Union in general and are also behind the rule of law debates. It is the subject matter of fundamental, general debates whether the European Union has to embody the cooperation of sovereign nations, or march towards the ideal of the United States of Europe, based on federalist principles. I deduce that the construction of the policy on the rule of law, exercising increasingly complete and close control over Member States, favours federalist plans. I also shed light on the occurrence that the European Union, which draws its legitimacy from other sources than a democratic mandate (such as technocratic expertise, "independence", close cooperation with civil organizations), via its policy on the rule of law, questions measures taken by institutions of the Member States, which do have a democratic legitimacy (such as national Parliaments, responsible governments). In this way, the different sources of political legitimation also compete with each other in rule of law debates. Finally, I determine that the rule of law debates reveal the conflict between the democratic and liberal principles, which both define the constitutional order of modern European countries. While the Member States criticised in the framework of the policy on the rule of law prefer the democratic principle to prevail, the European institutions place the emphasis on the liberal principle intended to limit democracy – also demonstrated by the fact that they push the rule of law into the absolute foreground.

In the dissertation, I regularly come back to the notion of the rule of law, and present in the different chapters that the European policy on the rule of law does not serve the classic constitutional protection of the rule of law, but that it is the tool of political battles fought over the division of competences and powers in the European Union. The rule of law as an expression, although it provides a "constitutional hue" to the ongoing political debates, is not in itself enough for the EU's rule of law control to be considered a well-founded legal and constitutional examination.

4. THE BRIEF SUMMARY OF THE RESEARCH RESULTS

The main results of my research can be briefly summarized as follows:

1. The rule of law debates in the European Union are connected to the creation of a new European policy, which seeks to closely monitor the Member States, even on issues that do not fall within the competence of the European Union, and therefore the existing tools of the EU would not apply to them.
2. The European rule of law control over Member States cannot be historically traced back to the original legal objectives of the EU; it is a result of political manoeuvres in the present day.
3. The political and institutional actors of the European Union have continuously kept the issue of the European rule of law control over Member States on the agenda since 2010, and step by step, developed an institutional toolkit for this purpose.
4. The development of the EU's policy on the rule of law has been influenced by complex political and institutional systems of interest.
5. The attitude of the Court of Justice of the European Union towards rule of law debates has changed considerably in the past years, as a result of which the Court is also becoming an increasingly active agent in the policy on the rule of law.
6. Depicting the ongoing debate in the European Union as a "rule of law" debate only reflects the approach of one of the camps involved in the debate. The same political debate can also be approached from different perspectives which put emphasis on national independence and sovereignty.
7. The position stakeholders take in the European rule of law debate is fundamentally determined by their approach to national sovereignty, federalism, democracy, liberalism and the sources of legitimacy of political action.
8. The European rule of law control is not an independent, objective constitutional law examination; it provides a tool for the EU's institutions and the political forces influencing their functioning, allowing them to exercise an increasingly wide-spread political control over the Member States.

5. PRACTICAL APPLICABILITY

In my doctoral dissertation, I treat one of present day's most important public life issues – both in Hungary and the European Union – with scientific accuracy. The analysis examining the rule of law debates shaping the relationships between the European Union and certain Member States of the European Union, in particular Hungary, may prove useful to decision makers in politics and public administration, as well as to those holding positions in the diplomatic corps of Member States and in the European Union's institutions. In light of the fact that the topic comes up daily, and has an increasingly intense media coverage as well, I hope the analysis may be instructive to any citizen interested in public issues.

My explicit goal is for my academic, theoretical analyses and observations to be of practical use, and for them to help make sense of the European rule of law debates that determined the 2010s, and now the beginning of the 2020s as well. Through years of continuous research, I collected, arranged in a sensible, logical order, and analysed with a critical eye the events and aspirations related to the rule of law in the European Union. I tried to find and illuminate – by supporting them with facts – the causes and essence of the underlying phenomena. I placed great emphasis throughout the analysis on locating the European institutional and policy decisions regarding the rule of law in the context of their wider interconnections with European law and politics, and on pointing out the most important trends.

One can look up in the dissertation, as if it were a manual, the main legislation, soft law instruments, institutional and EU court decisions regarding the policy on the rule of law, and the analyses of the rule of law mechanisms. The findings and reasoning articulated in this way may, in certain cases, help as a source and inspire, not only the experts working in academia, but also the stakeholders of the rule of law debates.

I hope that my dissertation could be of help to Hungarians in getting to know the European Union's complex systems of interests. And in case it is translated into a foreign languages, it could contribute to citizens of foreign countries getting a more balanced picture of European debates also affecting Hungary, which are often featured on the front pages of Western-European media outlets.

Finally, I strive to prove with my dissertation, that the issue of the EU's rule of law control over Member States cannot only be examined within the framework defined by the European mainstream, but a different, creative, independent, novel approach can also lead to substantive academic results. In this way, the present dissertation could hopefully later serve as a basis and inspirational source for further research.

6. RECOMMENDATIONS

My dissertation conveys in general, that measures taken in the European Union in the name of the rule of law are to be treated with due legal and political science discernment. It is worth viewing debates on the rule of law, as well as the criticisms directed to Member States, in their broader context. The EU institutions criticising the Member States in the name of the rule of law often present themselves in rule of law debates, as if they were capable of objectively examining the political processes of the Member States. Whereas their functioning and militant action in reference to the rule of law is defined by an intricate system of underlying interests. This statement is not only true for the EU's political institutions (or of those acting political), i.e., the European Council, the Council, the Parliament and the Commission. In the given case, it may also be relevant to the Court of Justice of the European Union, which may play a political role in certain instances, from a political science standpoint.

Special attention needs to be paid in rule of law debates to how the different decisions influence the division of competences between the European Union and Member States. The principle of conferral binds all EU institutions, and Member States can rightfully invoke it in rule of law debates. The Court of Justice of the European Union is no exception to it either. Respecting the authority and the decisions of the Court – which is paramount for the coherence of the European legal system – does not preclude that Member States recommend elements of correction in case of eventual amendments to treaties, which would better guarantee that the Court respect the competences laid down in EU Treaties and the sovereignty of the Member States.

The systematically mixed legal and political considerations contained in the rule of law criticisms of the EU institutions addressed to Member States, necessitate that the criticised Member State also mobilize the tools of law and politics in its defence. Disproving each criticism with substantive, rigorous legal argumentation is of fundamental importance since it can help direct the debates towards facts. Even though it might appear that the substantive rebuttal of each criticism cannot change the greater picture about certain countries, recording the facts and a different reading of debated issues is never a futile exercise. It can communicate an important message to those, who do not settle for the unconditional acceptance of unilateral findings. At the same time, since the criticisms are not limited to the area of the law, the matching responses also necessarily have to mobilize the tools of politics as well. Regarding the European rule of law debates for example, it is important for the criticised party to also find a way to effectively communicate their position both on the national and European scenes. This necessarily implies either the questioning of the rule of law discourse dictated by the EU's institutions, or its more nuanced approach. The articulation and effects of rule of law criticisms towards certain Member States largely depend on the political power relations at any given time, which can also be shaped by the construction of political alliances.

The values laid down in Article 2 of TEU, including the principle of rule of law, are binding on European Union institutions. However, the question whether the EU institutions are respecting the principles of rule of law has conspicuously never been asked during the rule of law debates. Is the functioning and decision-making of the EU institutions fully bound by law, for example? To what extent can European legislation create security against the tyranny of the political actors of the EU? In order to control this, it would be conceivable creating a monitoring body that would examine the functioning of EU institutions from a rule of law perspective. The institutions operating the EU's policy on the rule of law would also appear more credible if, in addition to the examination of the rule of law situation in Member States, as a gesture of reciprocity, they would also submit themselves to a continuous rule of law examination run by the Member States.

7. THE AUTHOR'S LIST OF PUBLICATIONS

Gát, Ákos Bence: *Duel Amical: pour la citoyenneté européenne à travers le pluralisme d'idées et le débat rescpectueux.* In: *Dialogues et diversités francophones. Actes du colloque du 20 septembre 2013 organisé à l'occasion de l'inauguration du Centre universitaire francophone de l'Université de Szeged.* SZTE, Nemzetközi és Regionális Tanulmányok Intézet, Szeged, 2014. pp. 56-59.

Gát, Ákos Bence: *Bevándorlás: Miért vannak a franciák nehéz helyzetben?* In: *Nemzeti Érdek,* no. 13-14, 2015. pp. 46-49.

Anfrol, Michel: *De Gaulle Európa Képe: a Nemzetek Európája.* In: *Nemzeti Érdek*, no. 13-14, 2015. pp. 20-25. (editor: Gát Ákos Bence)

Gát, Ákos Bence: *L'Union européenne et l'Europe centrale avec un regard hongrois.* In: Moreno, Laurent: *Regard croisés sur l'actualité européenne: contributions des étudiants du Master en études internationales. Cahiers du centre universitaire francophone*. Centre universitaire francophone de l'Université de Szeged, Innovariant, Algyő, 2016. pp. 7-25.

Gát, Ákos Bence: *Záró előadás. Az Értékek Európája konferenciasorozat keretében megrendezett, a Gaullizmus: az állam, a jog és nemzeti szuverenitás szerepe a modern európai demokráciákban c. konferencián elhangzott előadás összefoglalója*. Századvég Alapítvány, Budapest, 2016.

Gát, Ákos Bence: *The Living Memory of de Gaulle, Michel Anfrol talks to Ákos Bence Gát.* In: *Hungarian Review*, Volume VII, numero 3. 2016. pp. 22-30.

Gát, Ákos Bence: *De Gaulle emlékezete: Beszélgetés Michel Anfrollal, a Charles de Gaulle Alapítvány Baráti Tagozatának elnökével.* In: *Magyar Szemle*, Új folyam XXV., no. 5-6, 2016. pp. 19-26.

Gát, Ákos Bence: *Émergence d'une politique publique européenne de l'Etat de droit à travers le cas hongrois*. Master thesis in the framework of the joint master programme ENA/ Paris 1 Panthéon-Sorbonne,2017.

Mathieu, Bertrand: *A jog a demokrácia ellen?* Századvég Kiadó, Budapest, 2018. p. 245 *(professional translation, proofreading, Hungarian language edition, preparation of footnotes)*

Gát, Ákos Bence: *Küzdelem az európai színtéren – a Magyarországgal szembeni „jogállamiság"-kritika feltáratlan összefüggései.* Közép- és Kelet-európai Történelem és Társadalom Kutatásért Közalapítvány, Budapest, 2019. p. 264

Fábián, Emese–Gát, Ákos Bence: *Bevándorlás Franciaországban.* In: Besenyő János–Miletics Péter–Orbán Balázs (ed.): *Európa és a migráció: tanulmánykötet.* Zrínyi Kiadó, Budapest, 2019. pp. 402-434.

Gát, Ákos Bence: *La genèse et la relation des différents instruments de la politique publique européenne de l'État de droit.* In: *Jogelméleti Szemle*, 2020/1. pp. 17-33.

Gát, Ákos Bence: *Az alapjogok és a jogállamiság szerepének változása az európai integrációban.* In: *Acta Humana*, 2020/1. pp. 83-95.

Bólya, Boglárka–Gát, Ákos Bence–Kiss, Lilla Nóra–Traser, Julianna Sára: *Konferencia-összefoglaló: Dialogue on the Future of Europe – How to Build a More Effective and Genuinely Strong Union? A koronavírus-válság európai uniós intézményi kihívásokkal kapcsolatos tanulságai. A szubszidiaritás és a tagállamok alkotmányos identitásának szerepe az EU demokratikus rendszerében.* In: *Fontes Iuris*, 2020/3. pp. 59-62.

Gát, Ákos Bence: *Analysing the new Rule of Law Mechanism of the European Commission: Origins, contexts and questions about of the first Annual Rule of Law Report*. In: *Jogelméleti Szemle*, 2020/4. pp. 18-27.

Gát, Ákos Bence: *Az Európai Unió Bírósága jogállamisággal kapcsolatos ítélkezési tendenciái.* In: *Jogelméleti Szemle*, 2021/1. pp. 112-145.

Gát, Ákos Bence: *Az uniós jogállamiság-politika koronavírus tesztje*. In: Koltay, András–Török, Bernát (ed.): *A járvány sújtotta társadalom.* Ludovika Egyetemi Kiadó, Budapest, 2021. pp. 339-354.

Gát, Ákos Bence: *The Covid-19 test of the EU's policy on the rule of law.* In: *Public Governance, Administration and Finances Law Review*, Vol. 6, No 1. (2021)

Under publishing:

Gát, Ákos Bence: *The Genesis of the EU's Rule of Law Mechanisms Applied Against Central European Member States*. In: *Central European Papers*. (Expected publishing date: 2021)

Other relevant articles published online with scientific purpose:

Gát, Ákos Bence: *Az Európai Unió és a jogállamiság: az elmúlt évtized trendje*. 30 March 2020. https://eustrat.uni-nke.hu/hirek/2020/03/30/az-europai-unio-es-a-jogallamisag-az-elmult-evtized-trendje

Gát, Ákos Bence: *Késik az Európa Jövőjéről szóló konferenciasorozat.* 24 June 2020. https://eustrat.uni-nke.hu/hirek/2020/06/24/kesik-az-europa-jovojerol-szolo-konferenciasorozat

Gát, Ákos Bence: *The rule of law debate and the Covid-19 pandemic: towards an ever divided Union?* 26 June 2020. https://eustrat.uni-nke.hu/hirek/2020/06/26/the-rule-of-law-debate-and-the-covid-19-pandemic-towards-an-ever-divided-union

Gát, Ákos Bence: *Ami a State of the Union beszédből kimaradt: Hogyan garantálható a jogállamiság az uniós intézményekben?* 16 September 2020. https://eustrat.uni-nke.hu/hirek/2020/09/16/ami-a-state-of-the-union-beszedbol-kimaradt-hogyan-garantalhato-a-jogallamisag-az-unios-intezmenyekben

Gát, Ákos Bence: *Missing from the State of the Union speech: How can the rule of law be guaranteed in the EU institutions?* 16 September 2020. https://eustrat.uni-nke.hu/hirek/2020/09/19/missing-from-the-state-of-the-union-speech-how-can-the-rule-of-law-be-guaranteed-in-the-eu-institutions

Gát, Ákos Bence: *Európa a pártpolitika csapdájában*. 27 October 2020. https://eustrat.uni-nke.hu/hirek/2020/10/27/europa-a-partpolitika-csapdajaban

Gát, Ákos Bence: *A koronavírus hatása az európai diplomáciára*. 29 October 2020. https://eustrat.uni-nke.hu/hirek/2020/11/10/a-koronavirus-hatasa-az-europai-diplomaciara

Gát, Ákos Bence: *Jogállamiságí jelentés: egyre több fórumon vonhatják kérdőre egymást a tagállamok.* 11 November 2020. https://eustrat.uni-nke.hu/hirek/2020/11/12/jogallamisagi-jelentes-egyre-tobb-forumon-vonhatjak-kerdore-egymast-a-tagallamok

Gát, Ákos Bence: *A jogállamiság-vita mögött meghúzódó uniós intézményi harcok.* 4 December 2020. https://eustrat.uni-nke.hu/hirek/2020/12/04/a-jogallamisag-vita-mogott-meghuzodo-unios-intezmenyi-harcok

Gát, Ákos Bence: *Az Európai Unió 2020-ban VIII. – A jogállamiság-politika előretörése*. 6 January 2021. https://eustrat.uni-nke.hu/hirek/2021/01/06/az-europai-unio-2020-ban-viii-a-jogallamisag-politika-eloretorese

Gát, Ákos Bence: *Az EU Alapjogi Chartája - kiforgatott instrumentum?* 9 February, 2021. https://eustrat.uni-nke.hu/hirek/2021/02/09/az-eu-alapjogi-chartaja-a-kiforgatott-instrumentum

Gát, Ákos Bence: *Jogellenes próbálkozás Magyarország és Lengyelország megbüntetésére*. 9 March 2021. https://eustrat.uni-nke.hu/hirek/2021/03/09/jogellenes-probalkozas-magyarorszag-es-lengyelorszag-megbuntetesere

Gát, Ákos Bence: *Charter of Fundamental Rights of the European Union: a reinterpreted instrument?* 31 March 2021. https://eustrat.uni-nke.hu/hirek/2021/03/31/charter-of-fundamental-rights-of-the-european-union-a-reinterpreted-instrument

Gát, Ákos Bence: *Az Európai Bíróság szerepvállalása az uniós jogállamiság-politikában*. 11 May 2021. https://eustrat.uni-nke.hu/hirek/2021/05/11/az-europai-birosag-szerepvallalasa-az-unios-jogallamisag-politikaban

Gát, Ákos Bence: *Háttérinformációk a Bizottság éves jogállamisági jelentéséhez*. 24 July 2021. https://eustrat.uni-nke.hu/hirek/2021/07/24/hatterinformaciok-a-bizottsag-eves-jogallamisagi-jelentesehez

Gát, Ákos Bence: *Konferencia Európa jövőjéről: hogyan gondolkodjunk a távoli Európáról?* 11 October 2021. https://eustrat.uni-nke.hu/hirek/2021/10/11/konferencia-europa-jovojerol-hogyan-gondolkodjunk-a-tavoli-europarol

Gát, Ákos Bence: *Az Európai Parlament szükséges reformjáról.* 27 October 2021. https://eustrat.uni-nke.hu/hirek/2021/10/27/az-europai-parlament-szukseges-reformjarol

8. THE AUTHOR'S CURRICULUM VITAE

Ákos Bence Gát was born on 1 July 1989 in Szeged, Hungary. He followed primary and secondary school studies at Endre Ságvári Primary School and Endre Ságvári Grammar School of the University of Szeged. He started learning French in primary school and continued his studies in the French-Hungarian bilingual section of the Grammar School. During his secondary studies, he finished in 6th place in French, in the National Secondary School Competition. He was editor, then editor-in-chief of the Grammar School's student magazine "*Újságvári*" and received the school's medal for his academic achievement and his active involvement in student life. He passed his A level final secondary school examinations in French, English and History – the latter in French language. The Examination Board commended him for his overall performance during the final secondary school examinations. He holds advanced language certificates in French, English and Spanish. In addition, he has studied Catalan for a year, as well as Russian on several occasions.

He began his higher education studies in 2008, on the Central European campus of Sciences Po Paris (Paris Institute of Political Studies) located in Dijon, first on a scholarship from the Region of Burgundy, then from the French State. He graduated with a Bachelor's degree in political science in 2011. In 2010/2011 academic year, he spent Erasmus studies at Pompeu Fabra University in Barcelona, in public administration and political science. He attended classes there in Spanish, Catalan, and English. He graduated in 2013 with a Master's degree in European Business Law in Paris and Strasbourg from the Law School of Sciences Po Paris and from the University of Strasbourg. In 2016/2017, on a scholarship from the French Government, he graduated with a degree in administration from the École Nationale d'Administration (National School of Administration – ÉNA) and with a Master's degree in political science from the University of Paris 1 Panthéon-Sorbonne.

He interned for the international law firm, Gide Loyrette Nouel, and on two occasions, in the European Parliament. In the beginning of 2014, he worked in the International and Regional Studies Institute of the University of Szeged. He has been working in the Hungarian Ministry of Justice since June 2014. First, he was an advisor in the Cabinet of the Minister, then from 2019, he became the Head of Department at the State Secretariat for EU Affairs, a position he also currently holds. Between 2015 and 2016 he was a contributing research analyst at Századvég Foundation, then in 2018 he was legal counsel in the Cabinet of the President of the European Parliament. From 2019, he has been working as a researcher at the National University of Public Service's Europe Strategy Research Institute. During his university years, he founded Duel Amical, a website that seeks to contribute to the dissemination of knowledge and respectful dialogue between European countries by publishing multilingual, international debate articles. He published in several Hungarian and French papers about topics of public life in Hungary and France, in 2017 and 2018 he regularly spoke in Hungarian and French radio and television programmes.

He has always placed great emphasis on academic activities during his professional career. During the course of his years at university, he organized international conferences in France about the Hungarian Fundamental Law, the public law developments in Hungary and about the role of the Central European region in the European Union. In 2016, he organized a large-scale international conference in Budapest at the National University of Public Service, with the involvement of the Hungarian Ministry of Justice and Századvég Foundation, about the Gaullist conception of the role that the state, the law and sovereignty play in modern democracies. In addition, he also spoke at several conferences in Hungary and abroad. Since 2014, he teaches a master class in French language at the University of Szeged on the decisive political events in Hungary after the communist regime change. In 2016 he was a guest lecturer at Péter Pázmány Catholic University. In 2018, he translated from French into Hungarian the French constitutional law professor Bertrand Mathieu's book entitled "*Le droit contre la démocratie?"* and in 2019 he published his own book, entitled "*Küzdelem az európai színtéren – a Magyarországgal szembeni „jogállamiság"-kritika feltáratlan összefüggései"*. He was accepted to the Doctoral School of Public Administration of the National University of Public Service in 2019, in the course of which he could further pursue his academic activities and deepen his research on the EU's policy on the rule of law. He currently has 19 Hungarian, English, and French publications in the Hungarian Scientific Bibliography (MTMT). He regularly publishes in English and in Hungarian on the Europe Strategy Research Institute's website and speaks at different academic and professional forums.

Throughout his work, he has tried facilitating the professional and academic development of Hungarian youth. In 2016, he was part of the selection Committee of the Central European Campus of Sciences Po Paris and of the jury at the international Central European Law Conference for Students. He is an organizer and member of the selection Committee of the Europe of Nations Career Program – a joint cooperation program of the National University of Public Service and of the Hungarian Ministry of Justice. In 2021, he was a member of the jury of the competition entitled "Hungary and the Central European region in the European Union, the European Union in the world" announced by the Speaker of the Hungarian Parliament, the Hungarian Minister of Justice and the Head of the European Commission Representation in Hungary.