

Response to the European Commission stakeholders consultation on rule of law in the European Union

The European Commission opened a stakeholder consultation to feed into the Annual Rule of Law Report. The European Civic Forum took this opportunity to highlight why the deterioration of the rule of law in Member States is also a question that relates to the European policy making.

4 May 2020, Brussels

While the implementation of the rule of law is a national competence, the drivers and responsibilities of the current rule of law deterioration are both national and European

In the European Union, Rule of law (Etat de droit, Rechtsstaat) refers to constitutional supremacy and protection of fundamental rights from public authorities and private interests. This set of norms, values, institutions that are deemed to protect from abuses, are interlinked and, thus, affected by the way human rights, democracy and social justice are implemented. Experience shows that when societies are inclusive, when inequalities are low, when the effective access to rights is ensured, there is little risk that the rule of law is disregarded.

The rule of law backsliding that the European Union member states are experiencing reflects tensions that are present in our societies, including the crisis of trust in democracy, the growth of inequalities and vulnerabilities, the sense of competition between people for the effective access to basic rights. While states have sole responsibility over the implementation of rule of law nationally, these societal tensions in member states are not the sole responsibility of the decision-making of national authorities. They are exacerbated by the effects – in each country – of the economic and financial rules that are the responsibility of the European Union institutions.

The EU institutions' actions are key to rebuild trust and confidence in democracy and rule of law as tools for addressing the diversity of needs for the effective access to rights for all. In doing so, the economic and financial policies are long-term tools at the disposal of EU institutions to diminish the stress in society and, in this way, are strong drivers to contribute to limit negative pressures on the rule of law.

In their respective fields of responsibilities, European Institutions and member states need to prioritise the aim of ruling for cohesive societies.

The rule of law backsliding reflects societal tensions

Over the last decades, the economic system functioning at global and European level has been characterised by rising inequalities, growing numbers of people that feel being left behind, and shrinking social rights. All these trends have been accelerated after the 2008 financial crisis. This long process of degradation of social cohesion has produced deep socio-economic, cultural and geographical divides inside our societies. In the European Union today many feel that the current institutional channels do not ensure their needs are heard and addressed. Many have lost confidence in the ways rule of law and democracy are functioning, and consider that the universality of human rights is not reality. A democracy that fails to deliver the basic rights and needs for everyone contributes to feeding competition between groups. Nationalism, xenophobia, negation of the universality of human rights, identity politics based on exclusion are becoming substitutes for an inclusive shared future. These trends are not dominant in society, but they are worrisome as a significant part of society is looking in that direction.

The European integration on the dominant globalisation model appears to be detrimental to the protection of the rule of law

By exacerbating the tensions inside our societies, the social impacts of this economic model created a fertile ground for regressive political offers. Then, one could witness an increased trend to question the rule of law framework's ability to answer peoples' needs and expectations. The austerity response that followed the economic crisis has been an accelerator for social degradation. In some cases, regressive leaders won electoral majorities that allowed them to speed up the process of de-democratisation.

Even where this was not the case, the EU decisions on financial and economic policies monitored with imposed macroeconomic targets – that translate nationally in curtailing social protection spending – had an impact on what is left covered by the rule of law implementation instruments. By removing the power to decide on a number of relevant matters away from elected institutions, this model reduced drastically the space for voters and other checks and balances to scrutinise the decisions and have a say on a number of crucial policy areas.

While the intensity of the deterioration of the rule of law varies from country to country, almost no EU country has fully safeguarded checks and balances in the two past decades

The practices and trends include a shift of powers to the executive branch at the expense of parliamentary democracy or participatory mechanisms; increasing limitation of the oversight of the judiciary; a disregard of civic dialogue with intermediary bodies that are challenging the policy making; the deployment of a range of legislative, judicial and coercive measures to shrink the space for democratic civil society and other social actors calling the state and market institutions to account; a multiplication of challenges to freedom of speech, freedom of information and data protection guarantee.

In some countries, reforms of the judiciary and media have raised concerns and criticism over the political control introduced, and its implication for the rule of law. But public authorities silencing and prosecuting organisations, activists and peaceful protesters holding them accountable or acting to make rights a reality for all are also worrying signals of a general deterioration of checks and balances.

Civic organisations and movements are often among the first actors targeted when rule of law deteriorates. As a result, their ability to act as checks and balances to ensure our societies function in a transparent way is reduced. As such, the quality of civic space (rights of association, peaceful assembly, expression and participation) is not only an indicator of the state of the rule of law but also an integral component of the rule of law framework and the European Commission monitoring of the rule of law should dedicate careful attention to its different components.

COVID-19 crisis is deepening existing trends of deterioration

The trends briefly outlined so far have been further deepened by the current health emergency that has allowed most European governments to gain exceptional powers, introduce blanket restrictions to fundamental rights and increase the power of law enforcement authorities. The European response to support and recover the economy in member states during and after the present sanitarian crisis should prioritise social cohesion and ensure civic organisations are able to keep acting vis a vis the social and democratic emergencies Europe will face.

Recommendations

The European Civic Forum joins other CSOs in calling the European Commission to:

- Include systematically within the annual rule of law review a comprehensive assessment of the civic space in each Member State as an integral part of the system of checks and balances supporting democratic systems;
- Involve civil society organisations closely in all elements of the review cycle and ensure that national authorities organise an open and meaningful dialogue with civic organisations at national level on the Commission report and recommendations leading to follow up measures;
- Make sure that when deficiencies on civil society freedoms and civic space are identified, they are addressed with the whole array of tools available at EU level;
- Enable civic space at the European level by creating a solid European framework for open, transparent and regular civil dialogue and participation of associations (art. 11 TEU) to identify challenges and opportunities for a diverse and pluralist civil society and inclusive societies;
- Ensure that adequate public support and funding is granted to civil society and rights groups. Support to the civil society sector in all fields of actions (from delivery of social services to watchdog activities) should also be part of recovery measures during and in the aftermath of the COVID-19 pandemic.

Relevant resources

In December 2019, the ECF produced a first annual report on civic space in Europe covering events from June 2018 to June 2019 accessible here:

<http://civic-forum.eu/publication/view/activizenship-4>.

The report highlights trans-European trends concerning 1) the implementation of fundamental freedoms of expression, association and peaceful assembly; 2) the framework for CSOs' financial viability and sustainability; 3) the dialogue between civil society and governing bodies. The report also provides analyses by national organisations concerning six EU member states: Estonia, France, Italy, Poland, Romania and Spain. A summary of the report can be accessed here:

<http://civicspacewatch.eu/wp-content/uploads/2019/12/Summary-Activizenship.pdf>.

The report was presented in the European Social and Economic Committee and in the European Parliament in presence of key MEPs, OHCHR Representative for Europe, representatives of the FRA, European Commission and OECD. The European Civic Forum is also monitoring the state of fundamental rights and the demands of civil society during the COVID-19 crisis on a special page of the Civic Space Watch: <http://civicspacewatch.eu/solidarity-amid-covid-19-crisis/>.