

**URBANEJA CILLÁN, Jorge, *La crisis del Estado de Derecho en los Estados miembros de la Unión Europea*, (Aranzadi, Pamplona, 2023, 352 pp.)**

There are undoubtedly fashionable topics and what this book deals with is certainly one of them. This is proven by the fact that at the time we write these lines the issue of the Rule of Law is hotly topical in our country due to events that are on everyone's minds. The work we are discussing, however, is built with the desire to transcend what is a simple issue of current affairs and approaches the analysis of the matter with an ambition and a solid doctrinal background that must be fairly weighed.

With this aim, the author proceeds to present the foundations of the concept in International Law, in the Law of the Council of Europe and, fundamentally, in the Law of the European Union to which, as the book's title reveals, he dedicates the bulk of the work. Regarding the first, the almost titanic efforts to present a notion of the Rule of Law present in the heterogeneous work developed within the United Nations should be appreciated. However, the complex work, the author acknowledges, leads all the more to benevolently admitting that said process has led, at most, to "forming a principle yet in progress".

The investigation into the work of the Council of Europe on the matter is more solid, since it is identified as a constitutive principle of the Strasbourg organization and the commitment to its realization has led to the creation of a specific body: the Commission for Democracy through Law – better known as the Venice Commission – which has been playing a fundamental role in shaping the most outstanding characteristics of the notion, within the framework of its constitutional advisory activities in the processes of democratic transition developed fundamentally in the Eastern European States. But, as the author highlights, the commitment of the Council of Europe to the concept of the Rule of Law is also projected in the activity of its Parliamentary Assembly and also finds projection in the jurisprudence of the European Court of Human Rights. In fact, the European Court has developed a detailed jurisprudence on the independence and impartiality of the judicial bodies of the States parties to the European Convention on Human Rights, confirming the existence of serious deficiencies in the functioning of the rule of law in some of them (Russia, Ukraine, Turkey, Hungary and Poland). In spite of this, as the author shows, the weaknesses of the mechanisms for the execution of ECtHR rulings at the disposal of the Council of Europe has greatly reduced the effectiveness of its pronouncements.

However, the core of the work obviously concerns the examination of the issue within the framework of the European Union. In the profuse analysis developed, the characterization of the Rule of Law as a value of increasing relevance, despite its recent conceptualization, as well as the examination of the political mechanisms successively devised by the EU with a view to ensuring its respect by its member states. In this order, it is not surprising that the careful examination carried out yields an obviously negative conclusion given that neither the preventive and sanctioning procedures established in the TEU nor the pre-preventive mechanism conceived by the Commission in 2014

have produced effective results. In fact, without ever having articulated the sanctioning procedure of art. 7.2 TEU, the alternative instruments used have brought about a resounding failure, without, on the other hand, a possible reform being considered on the horizon in light of the considerations set out in the Report on the Result of the Final Conference on the Future of Europe. It is true, however, that hope lies within this list of instruments: this is the case of the most innovative mechanism to reinforce the Rule of Law in the Union launched by the Commission in its communication of July 17, 2019 and through which a review cycle is established applicable to all Member States, which, as the author highlights, has proven in its still brief history to be an adequate evaluation instrument, although its effects are still imprecise. In this order, he also dedicates an epilogue in his work to the question of the renewal of the CGPJ in Spain within the framework of the aforesaid procedure.

In the face of these uncertainties, other developments has undoubtedly proven to be of greater effectiveness. This is the case, on the one hand, of the jurisdictional mechanisms and, on the other, of the financial instruments, to which the author dedicates the last chapters of his work. In the first of them, the jurisprudential doctrine recently coined by the Court of Justice is addressed and by virtue of which if not the Rule of Law itself, but the respect for the principle of judicial independence by the Member States is established as an essential element in the jurisdictional control to be exercised by the Court of Justice through the direct effect now attributed to art. 19 TUE.

In the careful examination dedicated to this jurisdictional dimension of the issue, the effectiveness of the existing procedural remedies to address the problem of judicial independence and its systematic violation by some Member States becomes clear. In fact, as highlighted in the work, the jurisprudence developed by the Court of Justice since 2018 has become the strongest pillar for the defense of the Rule of Law in the EU Member States. Thus, the appeal for non-compliance has proven to be an effective mechanism in the hands of the Court of Justice to face the Polish challenge through the provisional measures and periodic penalty payments that the Court has agreed on in the course of some of the processes carried out. In turn, the preliminary ruling has served as a promising tool for national judges to raise questions in relation to the interpretation of national regulations related to the principle of judicial independence and the responses issued by the Court of Justice have served to specify certain requirements of the principle of judicial independence with respect to essential aspects of the judicial organization in the Member States (appointments, guarantees and disciplinary responsibility). Finally, the jurisprudence of the Court of Justice has even assumed the possibility of non-execution of European Arrest Warrants in the presence of serious systemic deficiencies that affect any of the judicial systems concerned. However, in this case the solution arbitrated by the Court of Justice (“examination in 2 stages”) raises, as the author highlights, some sensitive questions by placing on the judges a complex task of assessment, required undoubtedly of a normative clarification.

This issue, among others, reveals the limits that the judicial response poses to the systemic crises that affect the rule of law and explains the need to consider other mechanisms through which the EU can enhance its capacity to address this challenge. As it is known, the solution has come finally through the conditionality regime for the protection of the Union budget articulated in the Regulation 2020/2092, through which

the suspension of the disbursement of European funds is possible when two principles are cumulatively violated: the Rule of Law and the good financial management or the protection of financial interests in a sufficiently direct way. Given the relevance that the financing provided by the EU to Member States has gained as a result of the pandemic, it is not surprising that this mechanism of economic pressure has proven to be indisputably effective; especially given the guarantees and exhaustive evaluation elements provided for its application. However, the benefits of the mechanism have been called into question just at the time we write these lines (December, 2023), as the funds suspended to Hungary – a measure agreed upon in 2022 – have been unblocked to enable an agreement in relation to the start of the negotiations of Ukraine's accession to the EU, and therefore regardless of the persistent deficiencies in order to comply with the requirements of the Rule of Law still at stake in Hungary. In short, once again political interests have come into play, frustrating the initial objectives conceived in the Regulation 2020/2092 and calling into question the categorical and forceful defense of the rule of law that the conditionality mechanism intended to promote.

These inflections, perceived by the author himself, do not in any way cloud the rigor of an indispensable work to address a topic called to play, unfortunately, a decisive role in the future of the Union, as the most recent events concerning our country are clearly showing.

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