

Quo vadis rule of law? A discussion with Didier Reynders and Katarina Barley in the representation of Lower Saxony

By Reinhard Boest

Is the rule of law in the European Union in danger? In some member states, such as Hungary or Slovakia, there have been developments for some time that are causing increasing concern. It is not just about access to and the independence of the judiciary, respect for minority rights or freedom of the media, but also about corruption, not least in the handling of EU funds. Poland is currently showing how difficult it is to get back on the "right track" when the restructuring (or dismantling?) of the judiciary carried out by the previous government is already well advanced.

The State Representation of Lower Saxony in Brussels has now organized a very well-attended lunchtime event entitled "Rule of law in the EU, quo vadis?". Moderated by FAZ correspondent Thomas Gutschker, the event was attended by a prominent panel: the current Belgian Commissioner for Justice, Didier Reynders, and the Vice-President of the European Parliament (and former German Justice Minister) Katarina Barley; also taking part were Fryderyk Zoll, Professor at the Universities of Krakow and Osnabrück, and Almut Möller from the Brussels think tank European Policy Centre EPC (and former State Councillor for Europe in Hamburg).

The European Union has several more or less effective instruments at its disposal to counter these problems. These range from monitoring the situation in the member states to procedures for specific violations of EU law, the withdrawal of EU funds and the withdrawal of voting rights.

Since 2020, the European Commission has presented an annual "Rule of Law Report", which analyzes the situation in all member states and, since 2022, has also recommended concrete measures where deficits or shortcomings are identified. This EU-wide approach was intended to counter criticism that only certain Member States were being "pilloried" (i.e. Hungary and Poland in particular).

The 2024 edition was published in July. The Commission now sees the report as an effective instrument; two thirds of the recommendations from 2023 have been fully or partially implemented. However, it continues to see systemic concerns in some Member States and the situation has deteriorated further.

So where is the rule of law heading in Europe? The answer is - who is surprised? - differentiated. Reynders claimed for his term of office that we had finally entered the phase of concrete action; previously, the "rule of law" had mainly been talked about. Following on from the report, he emphasized that dialogue with the member states was an important element in raising awareness of deficits and initiating concrete measures.

SPD politician Barley warned against using the reports to create the impression that the shortcomings, which undoubtedly exist in all Member States, are equally significant. It must be clear that Hungary under Prime Minister Viktor Orban is an incomparable exception that must be treated as such. And it must be prevented that his destructive attitude also prevails at EU level. Reynders refuted her criticism that Orban's approval of the Ukraine aid had been bought with the partial release of blocked funds; no money had flowed because the conditions had not been met. However, the biggest problem in Hungary is not the judiciary, but above all corruption.

Zoll, a professor of law, impressively described the difficult situation in which Poland currently finds itself.

Eight years of "destruction" of the judicial system under the PiS government could not be repaired

in a year by the current head of government Donald Tusk - and with a PiS president still in office. Currently, there is a legal vacuum, for example with an "illegitimate" constitutional court appointed by the PiS. The termination of the proceedings against Poland under Article 7 of the EU Treaty (withdrawal of voting rights) is therefore not (yet) justified by a full restoration of the rule of law, but is a bonus for the efforts being made in this direction.

Almut Möller from the EPC pointed out the damage to the EU's image caused by rule of law deficits, not only internally but also externally. Critics of the EU, especially from autocratic states, should not be given such an easy ride.

It was foreseeable that the debate would mainly focus on Poland and Hungary. However, Reynders emphasized that the country reports contained important aspects and suggestions for all member states. Specifically, he only mentioned examples from Germany (the independence of public prosecutors' offices and the selection procedures for judges) - Belgium was not mentioned. A look at the country report for Belgium shows that the Commission sees a need for action above all in the structural underfunding of the judiciary, the length of proceedings, but also in transparency rules and access to documents. The repeated non-compliance with decisions by Belgian and European courts is explicitly criticized.

The Commission also sees regular reporting as an early warning instrument for developments in the Member States. As far as the sanctioning of infringements is concerned, Reynders is relying on an extension of the linking of EU aid to certain standards (conditionality), which has been practiced to date, particularly in cohesion policy. However, this is unlikely to be a sure-fire success.

All participants agreed that the rule of law is and must remain a cornerstone of European integration. Despite all the more or less significant shortcomings, this seems to be accepted in most member states. After Hungary, however, a critical development is currently also emerging in Slovakia due to planned restrictions on public broadcasting and the corruption prosecutor's office.

The EU is a community based on the rule of law - it depends on the member states adhering to the rules they have set for themselves. Recently, it has become increasingly apparent that member states are calling EU law into question when they come under domestic political pressure.

This also undermines the confidence of EU citizens that the rules must be applied and that they can sue for compliance before independent courts if necessary. In this respect, the functioning of the internal market and thus a key source of the prosperity achieved in the EU is also dependent on guarantees based on the rule of law.

At the end of the lively debate on the podium - as is unfortunately too often the case - there was hardly any time for an exchange with the audience. Nevertheless, we would like to thank the State Representation of Lower Saxony for taking up this important topic.

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