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# **The Rule of Law in the European Union**

How to Strengthen the Rule of Law?

School of Management  
Master of Administrative Sciences  
Public Management

Vaasa 2022

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**University of Vaasa**

**School of Management**

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**Title of the Thesis:** The Rule of Law in the European Union : How to Strengthen the Rule of Law?

**Degree:** Master of Administrative Sciences

**Programme:** Public Management

**Supervisor:** Christoph Demmke

**Year:** 2022                      **Pages:** 51

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**ABSTRACT:**

The rule of law is the one of the main values in the European Union. The rule of law protects fundamental rights and allows the application of the EU law. The rule of law is crucial to political stability, security, and international peace. This master's thesis focuses on how to strengthen the rule of law in the European Union.

The theoretical part of this thesis focuses on the concept of the rule of law. Compared to the international rule of law, EU's definition of the rule of law is unique because the EU has its own legislation and treaties to protect it. The study itself was executed by theoretical and qualitative methods since the aim was to understand the concept of the rule of law. The research material was collected from electronic databases. The material was selected with strict criteria in order to find as versatile ways to strengthen the rule of law as possible. The articles used in this thesis are in English and peer reviewed. The themes of all selected articles address the rule of law in the European Union, and they give different views on how to strengthen the rule of law.

The study highlights the importance of defining the rule of law and lays out different concepts of it. Among clarifying the concept of the rule of law this thesis gives tools to strengthen it. The thesis builds an understanding of what the EU has done to protect the rule of law and what issues the EU has nowadays with the member countries that violate the rule of law. The rule of law needs more clarification, so that it can not be misused. Time will show if the financial sanctions effect on the state of the rule of law. The need for the further research is also mentioned. The rule of law must be examined regularly and studying the ways to protect it could be more radical.

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**KEYWORDS:** rule of law, constitutional state, administrative law, EU law

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**VAASAN YLIOPISTO****Akateeminen yksikkö**

<b>Tekijä:</b>	Tilma Silvonen	
<b>Tutkielman nimi:</b>	The Rule of Law in the European Union : How to Strengthen the Rule of Law?	
<b>Tutkinto:</b>	Hallintotieteiden maisteri	
<b>Oppiaine:</b>	Julkisjohtaminen	
<b>Työn ohjaaja:</b>	Christoph Demmke	
<b>Valmistumisvuosi:</b>	2022	<b>Sivumäärä:</b> 51

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**TIIVISTELMÄ:**

Oikeusvaltioperiaate on yksi tärkeimmistä arvoista Euroopan unionissa. Oikeusvaltioperiaate suojelee keskeisiä arvoja ja mahdollistaa EU:n lainsäädännön. Oikeusvaltioperiaate on välttämätön poliittiselle vakaudelle, turvallisuudelle ja kansainväliselle rauhalle.

Tässä Pro gradu -tutkielmassa keskitytään oikeusvaltioperiaatteen vahvistamiseen Euroopan unionissa. Tutkielman teoriaosuus keskittyi määrittämään oikeusvaltioperiaatteen käsitteen. Verrattuna kansainväliseen oikeusvaltioperiaatteeeseen, EU:n määritelmä on yksilöllinen, sillä EU:lla on oma lainsäädäntö ja sopimukset, jotka turvaavat oikeusvaltioperiaatetta. Tutkimus toteutettiin teoreettisena ja laadullisena tutkimuksena, koska tarkoituksena oli rakentaa ymmärrys oikeusvaltioperiaatteesta Euroopan unionissa. Tutkimusaineisto kerättiin sähköisistä tietokannoista. Aineiston valintaan asetettiin tarkat kriteerit, jotta tutkimus voisi muodostaa monipuolisen kokonaisuuden oikeusvaltioperiaatteen vahvistamiselle. Lähteet olivat englanninkielisiä ja vertaisarvioituja. Lähteiden aiheet käsittelevät oikeusvaltioperiaatetta Euroopan unionissa antaen erilaisia näkemyksiä siitä, miten oikeusvaltioperiaatetta voitaisiin vahvistaa.

Tutkimus korostaa oikeusvaltioperiaatteen merkitystä EU:ssa ja huomauttaa, että sen käsitettä tulisi tarkentaa. Tutkimus ottaa myös huomioon, että käsitys oikeusvaltioperiaatteesta vaihtelee eri jäsenmaissa. Tarkentamalla oikeusvaltioperiaatteen käsitystä tutkimus antaa lisäksi tapoja vahvistaa sitä. EU:n toimet oikeusvaltioperiaatteen puolesta sekä nykyiset ongelmat jäsenmaissa otetaan myös huomioon. Oikeusvaltioperiaatetta täytyy tarkentaa, jottei sitä käytetä väärin. Aika näyttää onko taloudellisilla sanktioilla merkitystä oikeusvaltioperiaatteeeseen. Tarve jatkotutkimuksille mainitaan. Oikeusvaltioperiaatetta täytyy tarkastella lisää ja etsiä perusteellisemmin keinoja vahvistaa sitä.

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**AVAINSANAT:** rule of law, constitutional state, administrative law, EU law

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## 1 Introduction

This research is about the rule of law in the European Union. The topic is extremely current and important since the rule of law plays a huge part of the Union's values and guiding principles. State governed by the law is founded on legislation that protects human rights and the legislation is applied in independent courts. Still, it is difficult to define what the rule of law means and is there even a universal concept.

The rule of law concerns everyone in the country, community, or state. Therefore, every member country is supposed to obey the rule of law within the EU. The European Union has had several issues maintaining and strengthening the rule of law with the member countries. For example, Poland and Hungary have acted against the rule of law. For several years, the EU has not had tools to restrict Poland and Hungary and the EU has mainly scolded countries that do not obey the rule of law. The intention of this research is to find out how the EU defines rule of law and what measures the EU could have to strengthen the rule of law.

The research is done by theoretical and qualitative methods. The plan is to collect, analyse and connect several sources to build an understanding of how the European Union defines the rule of law. The rule of law means different things in different countries so the goal for the research is to find more determined explanation for rule of law. When the rule of law is clear and compact concept, the EU will have ways to maintain and strengthen the rule of law.

Since the theme for this research is crucially topical, one should understand that the situation in the EU can change surprisingly fast. The European Union is not an island, all the events, wars, pandemics, economic cycles and so on effect the Union. The aim of this research is not to recount the current situation in the EU but to build an understanding of the rule of law and give tools to strengthen it.

To find ways to strengthen the rule of law in the European Union, this thesis is built in the following way: after the introduction, the second chapter explains why the research is done and the methods used in the research. The aim of the chapter is to narrow the thesis and explain what is excluded from the thesis as well. After that, the theoretical framework is introduced and the key concepts of the rule of law are being defined. The fourth chapter is the practical part which concentrates on the research question with the goal to find ways to strengthen the rule of law and study the current situation in the European Union. The thesis will end with a conclusion chapter that will bind everything together.

## **2 About the Research**

### **2.1 Reasons for the Research**

The concept of the rule of law goes all the way back to Athenian democracy; the rule of law builds key features for democracy, and it protects the people from the tyrants and abusive officials (Meierhenrich & Loughlin, 2021, p. 25). Thus, there has been evidently countless number of studies about the rule of law. Even though the theory is ancient, it is applied furthermore to different states and administrations.

This research is about the rule of law in the European Union. I find the politics in the EU and the future of the EU extremely interesting, and the rule of law is a key element in the European Union. There have been several studies about the rule of law in the EU especially after Poland's and Hungary's neglects of the rule of law and how the EU reacted to the violations. The topic has also been very popular in the news, when the state of democracy and European values have been questioned (Coman,2016). I believe the rule of law should be examined more carefully because the situation in Poland and Hungary changes quickly and the EU has new tools to prevent and react to the rule of law violations. The rule of law will most likely be onward the main key in building the Union's future because it is a crucial part of the EU's values.

As the main source of this research, I am using the theory of the rule of law. My goal is to find how the EU defines the rule of law; there are different definitions – thin and thick, among the member countries. What is important in this research is to find in particular the meaning of the rule of law in the EU, its Court of Justice and European Commission, the heart of the EU. When the rule of law is defined, there can be tools to strengthen it.

Since the rule of law has been mentioned as early as in Aristotle's philosophy it is clear there are several previous studies about the rule of law. However, the studies concern more often the international rule of law itself and not so much the European Union's

rule of law. As an example of the recent literary work, *The Cambridge Companion to the Rule of Law* (Meierhenrich & Loughlin, 2021) covers the history, the critics, and the different courses of the rule of law.

The European Union itself and its institutions are most probably best on the pulse of the rule of law when observing the rule of law within the EU. After all, the European Union is the main player in composing the concept for the rule of law in Europe. The European Union also develops the rule of law all the time because the EU supervises the member countries. The rule of law in the European Union is not only a current study but also a constant conversation in the EU and in overall in the news. For example, when the European Commission launched new actions against Hungary for violations of the rule of law, the topic was covered in major news outlet. (Helsingin Sanomat, 2022). There are also research communities for the rule of law, for example Helsinki Rule of Law Forum (2022), which is founded by the government of Finland and supported by the EU institutions and its mission is to study the rule of law in EU's enlargement policy in external relations of the EU and all in all the rule of law as a legal concept.

Since the rule of law as a theory has a long history and is still relevant in every society, it continues to be a burning research topic. However, one could argue that there should be more studies that define what the rule of law means exactly in the EU. International rule of law is not enough when discussing about the rule of law in the EU because EU is unique and complex union of different countries that have their own conceptions of the law. To be mentioned, there are not previous studies of the rule of law in the EU in the University of Vaasa. Considering all these stated aspects, this research is thought to be crucially relevant.

## 2.2 Research Method

The research concentrates on defining the rule of law in the European Union, which means that the theory is build on the rule of law and the research question is to find how to strengthen the rule of law in the EU. That is why the research remains on the EU's view of the rule of law and the plan is not to study the rule of law internationally. This research does not examine the rule of law inside one country but within the EU.

The research is done by qualitative research method since it is the most suitable for examining the research topic and questions thorough. With the qualitative research method the rule of law is possible to comprehend because the method focuses on the concept of the rule of law. In qualitative research the material and literature is studied as a whole. Qualitative research starts with simplifying the discoveries and then finding the answer for the questions. (Alasuutari, 2011.) Therefore, in this thesis the aim is to build an understanding of the rule of law in the EU.

In order to form an understanding of the rule of law in the EU large amount of research material is needed. Theoretical framework decides what kind of material and methods should be used in research (Alasuutari, 2011). In this thesis the research material was collected from electronic databases and the aim was to find articles that are as new as possible. Research material that concerns EU's policies was collected from EU's own websites and treaties. To form a comprehensive understanding of the rule of law in the EU this thesis covers also other scientific articles. The material was selected with strict criteria in order to find as versatile ways to strengthen the rule of law as possible. The articles used in this thesis are in English and peer reviewed. The themes of all selected articles address the rule of law in the European Union, and they give different views on how to strengthen the rule of law.

As the topic of this research is very current, there can be sudden political or social changes. Hence this research will not be able to react unexpected events without having adequate academic studies already made about the events. The rule of law is a complex

and indefinitely large concept and that is why there is a need for research that concentrates only on the rule of law in the EU.

## 3 Theory

### 3.1 What Is the Rule of Law?

The rule of law is “essentially contested concept” according to philosopher Jeremy Waldron (Waldron, 2002). If every member country in the EU dictates their own concept of the rule of law, how the EU can have one meaning for it? When discussing about the rule of law, there should be an understanding of what the topic is about.

The key element for the rule of law is legality; it demands that the government obeys the laws and there are certain quality requirements that the law follows. Especially crucial is that the judiciary inspects the legality of the acts that the government does and gives fair hearing for the individuals. (Lautenbach, 2013.) As the European Union (2022) describes, the Court of Justice makes sure that the laws are obeyed same in every member country and the Court of Justice as well settles legal disputes between national governments and EU institutions. Also, individuals, companies and organizations can take actions against an EU institution by means of Court of Justice. Hereby the European Union holds the right key for the rule of law to thrive.

Laws themselves are not automatically good. That is why they need to be made according to shared morals and values and so that the equal human rights are protected. The United Nations (2022) describes the rule of law cardinal to political stability, security, and international peace. Every person, every organization – public or private – are accountable to laws that are publicly propagated, equally executed and individually resolved. Fairness, realisation of human rights norms, separation of powers, deliberative participation and legal transparency are extremely important for the laws to be acceptable.

Values change through out the time, so it is also important that the laws are improved. For example, the conception of whom the human rights concerns have been dramatically different in the past. Laws should be difficult to change so that arbitrary ruler can not

change them suddenly but also democratically made improvements need to be feasible. As Plato stated, “it is impossible to devise, for any given situation, a simple rule which will apply to everyone forever” (Meierhenrich & Loughin, 2021, p. 37).

The rule of law has many interpretations, but widely shared view is that the rule of law should be clearly defined; it is a law after all, and laws are based on international values, standards, and support of human rights. In addition, laws are democratically built and executed. Rule of law is made so that the acts and decisions of governments and institutions are legal and based on a mutually agreed rules.

Although the plan is to define the rule of law, one should understand that nothing is perpetual. As the philosopher and lawyer Bruno Leoni (1991, p. 74) has said: “The legislative process is not something that happens once and for all. It takes place every day and is continually going on.”

### **3.2 EU’s Definition for the Rule of Law**

The European Union lists the rule of law as one of the EU’s core values (European Union, 2022.) The rule of law in the European Union means that the law acts as a foundation for the EU; every function gets its validation from the treaties that the member countries have agreed together. An independent judiciary upholds the law and justice. Also, the member countries have given the final jurisdiction to the Court of Justice. (European Union, 2022.) Thus, the EU can not make quick unexpected changes without certain procedures. The Court of Justice reviews the legality of the rule of law in member countries and collaborates with the national courts (Court of Justice of the European Union, 2022).

Tytti Tuppurainen, minister for European Affairs stated in her speech for the Europe Forum (Prime Minister’s office of Finland, 2021) that the rule of law is central in the Union’s politics about enlargement and adjacency which fosters peace, wellbeing, and stability in the Europe. For a country to become a member of the European Union, it must

commit to shared values. Fulfilment of the rule of law is the key to Union's enlargement methodology, Tuppurainen crystallizes. Among acting as the protection against the abuse of power, the rule of law acts as a foundation for peace and stability in the European Union. Because the rule of law is such a crucial principle in the EU, it should be defined precisely and have every member country agree about the definition.

European Union's relationship with the rule of law is transient and changing, and that is positive, because then the EU has the possibility to make improvements. The challenge is to make the rule of law strong and effective. (Walker, 2008, p. 3.) That is why the definition of the rule of law is difficult to define precisely even in the EU but if the EU wants to make actions based on the rule of law, it should not be only a value, but also an instruction manual.

As mentioned earlier, the rule of law is central for the European Union. The rule of law protects human rights and is crucial for the EU's stability. The rule of law is a value which works as a base for the Union, and it holds the entire political legal edifice together (Magen, 2016). The rule of law is the most important legal instrument in the European Union. When the rule of law comes true, the European Union has the base to thrive. (Buscaneanu, 2020). For example, the EU can become integrated, and the decision-making can be seamless with the member countries. When defining the rule of law, truly one word describes it most efficiently: "DNA". "The rule of law is part and parcel of the Union's DNA and the assumed shared patrimony of each of its members" (Magen, 2016). The research will focus on more about the reasons why the rule of law needs to be protected later on the text.

### **3.2.1 The Treaty of Lisbon**

The Treaty of Lisbon came into force 1 December 2009 and it improved citizens opportunity to participate in decision-making and all in all the policymaking was made to be more open and efficient (European Parliament, 2021). Transparency is important

for the rule of law to work. The legality of actions needs to be observed. The Treaty of Lisbon clarified values such as the rule of law as the primary objective of the EU. Additionally, the Treaty of Lisbon created an area of freedom, security and justice within the European Union. (Van Elsuwege & Gremmelprez, 2020.)

The Union did not get any new jurisdiction but it changes the way Union uses its authority. The Union became full legal entity which means that the EU can join international organisations and sign international agreements. (European Parliament, 2021.) Treaty of Lisbon clears which powers belong to the EU, which to the member countries and which are shared. The values such as human dignity, freedom, democracy, equality, human rights and rule of law are listed in the Treaty. (EUR-Lex, Treaty of Lisbon, 2007.) In other words, Treaty of Lisbon was important confirmation for the rule of law.

Concerning the rule of law, Treaty of Lisbon clarified how the decisions are made and who is responsible of making them. Because the authority is widely divided in the European Union, it needs to be clear which political decisions belong to the member countries parliaments and which to the EU. The rule of law can be violated if the separation of powers is not clear.

### **3.2.2 Court of Justice of the European Union**

“The rule of law is a legally binding constitutional principle which is one of the basic principles characteristics of all the constitutional systems of the Member States of the European Union” (Dimitriu, 2019, p. 544). Court of Justice of the European Union secures the structure and functioning of the EU’s legal order. The Court of Justice of the European Union makes sure that the rule of law is carried out in member countries. (Van Elsuwege & Gremmelprez, 2020.) Therefore, Court of Justice of the European Union plays an important role in protecting and strengthening the rule of law in the EU.

The Court of Justice of the European Union observes the EU institutions legality and makes sure that the treaties are followed as well as interprets European Union law when national courts motions for it (European Law Institute, 2022). Hereby the Court of Justice inspects that the legally binding principles are not only values but that they are put in particular into action. The rule of law is an important value for the EU but also for it to thrive, the Court of Justice needs to protect it and have sanctions if the rule of law is violated.

Court of Justice of the European Union and national courts make sure that the rules are followed and that no one uses high-handed power (Lenaerts, 2020). Concerning the rule of law, the Court of Justice of the European Union is not directly able to adjudicate on values such as rule of law being violated. However, the rule of law plays an important role in the EU's legal order. (Van Elsuwege & Gremmelprez, 2020.) To protect the rule of law, it should be not only a value but also a law that enables sanctions. Later on the thesis the possibility of sanctioning the member countries that do not obey the rule of law will be covered.

The Court of Justice of the European Union is crucial in protecting and strengthening the rule of law because the rule of law relays on the case law of the Court of Justice of the European Union. The Court of Justice of the European Union also plays an important role in the EU's integration process and the further evolution of the EU where the rule of law is more than a value. (Van Elsuwege & Gremmelprez, 2020.) To protect the rule of law, the member countries respect for the Court of Justice of the European Union should be sturdy.

Court of Justice of the European Union stated in the last year's Annual Report (Court of Justice of the European Union, 2021, p. 7), that challenging of the authority of judicial decisions and questioning the values of the EU has become more common. For example, Hungary and Poland claimed that the regime of conditionality should be repealed. The regime of conditionality was made to protect the EU's budget if the principles of the rule

of law were violated. The Council of the European Union could suspend payments from the budget from the member country that has violated the rule of law. The Court of Justice of the European Union rejected the action of the Hungary and Poland. (Court of Justice of the European Union, 16.2.2022.) The judgement shows that the Court of Justice of the European Union is determined to protect the rule of law.

### **3.2.3 Thick and Thin Conceptions**

The rule of law can be defined quite differently in different societies and countries. It can be merely a value or sewn into morals and become an action. When every member country has their own governments and legislation, their view on the rule of law is unique and universal.

Even though the countries have become part of the European Union, their history still have an impact on their conception of the rule of law. Especially the lacking sense of common society causes the member countries to have different definitions for the rule of law (Walker, 2008, p. 12). The rule of law in the European Union is defined by the Article 2 TEU (EUR-Lex, 2012). The base for the Union is build on “respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights”. According to the Article, these values are shared among the member countries. When the rule of law is listed as a value, it is understandable that the definition differs in every member country. Two main differences in the definitions are the thick and thin conception of the rule of law.

Thick conception of the rule of law holds itself more than the thin conception. According to thick conception, rule of law consists of requirements about the law, and it does not only tell the nature of the law or is not only a “formal concept” (Pavel, 2020). Whereas the thick conception of the rule of law includes more information about the content of the law, the thin conception acts as a tool for government’s actions (Møller & Skaaning, 2012). When countries define the rule of law differently and their ideas of the rule of

law can be so thin that the law acts only as a formal concept, it is extremely challenging to find one meaning and one task for the rule of law.

As Van Veen notes (2017), in fragile societies the thin conception is not enough; it does not have enough content to become an action but at the same time the thick conception is too far from practical proximity. If a candidate country wishes to enter the European Union, it needs to have a rule of law that has content and power to become an action. At the same time if the European Union wants to be integrated, it needs to have a relevant meaning for the rule of law and have clear instructions for different situations concerning the rule of law. This will be covered later in the text. Whereas the thin concept gets well deserved critic, the thick concept is not so pure either. May argues (2019), that the thick concept is often sold as a “buy one get more” -pack. It is clear that the rule of law helps support social justice and equality, but these values do not happen as a secondary product with the rule of law, but they also need to be secured, examined and improved all the time.

The European Union can only be successful when the definition of the rule of law is clear, and the member countries have the same view of the rule of law. The EU integration is possible when the EU institutions and member countries revere “rules of the game”, meaning that no one is above the law and court of justice in the EU and national courts guards that the rules are obeyed (Lenaerts, 2020). As earlier mentioned, the thin and thick conceptions are not perfect to define the rule of law. The rule of law shall not be used as a basket for everything good one could ever wish from a political system (Meierhenrich & Loughlin, 2021, p.124). On one hand, the thick conception can be too complicated and on the other hand, the thin conception might not be enough for the law to become action. That is why we need define the rule of law for the EU, from the perspective of the EU.

## 4 Research and Findings

### 4.1 Research Question

Once the theory of the rule of law has been opened and explained, the research can move on to study the research question. The internationally known rule of law was explained as a foundation for any state or society that protects the citizens from arbitrary exercise of power. The rule of law in the European Union focuses on shared values and is focal for the Union's peace and stability. Union gets its validation from the treaties that the member countries have agreed on together. One could argue that without the rule of law there would not be European Union.

After the enlightenment of the rule of law, the study can proceed to the following research question:

*How to strengthen the rule of law in the European Union?*

This specific question has been chosen for this research because the rule of law is central to the European Union and the future of the EU relays crucially on the condition of the rule of law. After all the rule of law is one to protect human rights and bring stability to Europe. When studying what strengthens the rule of law in the EU, it is reasonable to examine also what weakens the rule of law in the EU. What tools the EU has to protect the rule of law? What are the current obstacles for the EU to strengthen the rule of law? What actions EU can take towards countries that do not obey the rule of law? With answering these questions, the research can give tools for tackling issues concerning the rule of law and offer a view for the future of the European Union.

While the future of the EU is unknown, the goal of this research is to examine the current situation with the rule of law in the EU and find ways to strengthen it. By collecting several scientific articles and connecting their views on the rule of law in the EU, there can

be prospects for the positive headway with the rule of law. In other words, “We make progress by arguing about it” (Meierhenrich & Loughlin, 2021 p.590).

The studying of how to strengthen the rule of law will start with stating the tools the EU has to protect the rule of law and what roles different institutions in the EU have in the area concerning the rule of law. After that, the reasons why the rule of law needs to be protected will be covered. Later issues concerning the rule of law in the European Union such as Hungary’s and Poland’s breaches will be examined. After building an understanding of the current situation in the EU, I will analyse various scientific articles that give their own view on how to strengthen the rule of law. I believe that with all-round examination this research can find best ways to improve rule of law in the EU.

## **4.2 EU’s Tools to Protect the Rule of Law**

The principles of the rule of law are placed in the core of the European Union but more difficult aspect emerge when the rule of law is being questioned or violated in the member countries (Coman, 2016). As the recent years show, the EU has new issues with protecting the rule of law and the EU has had to develop new tools to tackle these issues. In this chapter, the EU’s instruments to protect the rule of law are examined.

The protection of the rule of law in the European Union begins with the principles of primacy of EU law. The precedence of the EU law means that if there is a conflict between an aspect of EU law and aspect of national law, EU law will dominate. Without this principle, the EU policies would not work. The precedence of the EU law applies where EU countries have assigned their sovereignty to the EU. (EUR-lex, 2022.) In the Treaty of Lisbon, the rule of law is clarified as the primary objective of the EU and the Court of Justice of the European Union makes sure that the rule of law is applied in the member countries. The European Commission has a meaningful role in protecting the rule of law; if a member country does not obey EU law, the European Commission can launch a formal infringement procedure. If after the caution the member country still

does not fulfil its obligations, the European Commission can refer the matter to the Court of Justice of the European Union and financial penalties can be imposed to the member country. (European Commission, 2022.) Other EU institutions such as the Council of Europe assists the member countries to fight against corruption and helps them to reform a constitutional state (Council of Europe, 2022). The Council of Europe has gotten quite much critic concerning its handling of the rule of law and that will be covered later in the thesis.

#### **4.2.1 Rule of Law Report**

To inspect the state of the rule of law, the European Commission publishes a report of the rule of law every year (European Commission, 2022). In the Report the European Commission lays out the current situation in the member countries regarding for example the Covid 19 and points out what actions the member countries and the EU have made against threats towards the rule of law. New report is published on a regular basis which shows that the European Union respects the rule of law as its core value and that the EU wants to improve the rule of law in every member country.

In 2021, the European Commission published Rule of Law Report (20<sup>th</sup> of July 2021) where the EU states positive and negative developments in member countries. The report focuses on three areas that are important for the rule of law: the justice system, the anti-corruption framework, and media pluralism. The report also reflects other institutional issues that are being observed. The report shows that the EU is keen to strengthen the rule of law in its institutions and in member countries.

The Rule of Law Report is yearly made, and its mission is to prevent issues concerning the rule of law and by examining every member country equally, the problems towards the rule of law can be solved early on (European Commission, 2021). According to the report, several countries have grounded Councils for the Judiciary and they have made reforms on how the judiciary is chosen. This means that there are more clear and

separate institutions that supervise the governments actions. These judiciaries must be independent and also under EU's supervision. The rule of law is to be taken seriously, not merely as a political tool or "self-congratulatory rhetorical device" (Meierhenrich & Loughlin, 2021, p.569). Fortunately, many countries have strengthened the integrity framework for judges and prosecutors (European Commission, 2021).

To strengthen the rule of law, the EU has invested in digitalisation and justice systems so that the court processing could be more seamless. In the report EU focuses heavily on anti-corruption by reinforcing the current law, for example making it illegal to accept or offer unjustified benefits and EU is also removing obstacles to the effective rule of complicated corruption cases. (European Commission, 2021.) By reading the report, one can see that making the EU unified is not simple. Every country needs its own renovations, especially in the case of corruption where every member country has their own concept of corruption and their own needs for legal reforms. To strengthen the rule of law, corruption can not be managed lightly nor the meaning of it should not be overused. It is particularly important in the fight against corruption to separate strong, legitimate cases from the cases that are faint or politically motivated. Those institutions that are in charge of enforcing anticorruption, need to reflect honesty, impartiality and competence. (Eisler, 2021.)

To consolidate the rule of law, the European Union has made the questions of the rule of law more visible and open to discussion as well as enforcing the values and improving cooperation with other member countries as well as organizations and countries outside the EU (European Commission, 2021). The rule of law is important as long as it is a conversation topic. The rule of law as a value needs constant examination and evaluation because even if something is already in trust, it does not mean that it can be forgotten. The EU must also be incredibly careful when discussing about the rule of law; the meaning itself can diminish if the word is overused and ideologically abused. Overall, the rule of law must not become political jargon. (Meierhenrich & Loughlin, 2021, p.569.)

#### **4.2.2 Rule of Law Framework**

In a rule of law crisis, the European Union can initiate the Rule of Law Framework. The mission of the Framework is to prevent the rule of law violations to expand so seriously that the Article 7 is needed. The Framework is based on a dialogue with the concerning member country, and it has three stages: Commission assessment, Commission recommendation and monitoring of the follow-up to the Commission's recommendation. (European Union, 2022.)

The Rule of Law Framework was used against Poland first in 2017. The long durable conversation with the Poland did not proceed and Poland used the inevitable card of interference in domestic affairs. (Neuwahl.) Later both countries, Poland, and Hungary, have become subject to the Article 7 TEU procedure which the Rule of Law Framework made possible (Monciunskaitė, 2022).

Even though there are tools to punish Poland and Hungary, the EU has mainly scolded these countries. According to Closa (2020) EU's institutional design and legal structure limits the possibilities to sanctions. While the Rule of Law Framework is based on a dialogue with the member countries, it should give tools to strengthen the rule of law. The mere follow-up to the Commission's recommendation does not seem to change the state of the rule of law in the member countries.

#### **4.2.3 Financial Sanctions**

In 2018, Commission proposed an idea, that if a country is violating the rule of law, the EU funds could be suspended. Earlier the EU has protected the rule of law mainly with the Rule of Law Framework and the Article 7 which have got jammed on a level of scolding. As a difference to the past, the EU is now addressing its member countries rather than just promoting its values. (Blauberger & van Hüllen, 2020.)

Poland became the first country to be obligated to pay penalties in 2021 because of its violations towards the rule of law and the situation of the Polish Constitutional Tribunal. Poland is ordered to pay penalties of at least €100,000 per day by the Court of Justice. (Pech etc., 2021.) Even though the number of penalties may sound like a lot of money, the reality is that Poland is still receiving enormous financial support from the EU. In 2020, Poland received 18 billion euros from the EU's spending (European Commission, 2020). Also, from the EU's stimulus package called NextGenerationEU, Poland is receiving 23.9 billion euros. The package is meant to rebuild a post-COVID-19 Europe (European Commission, 2020.) The sanctions do not sound that serious for Poland after all.

In the court case (Court of Justice of the European Union, 2021) which concerns the Poland's sanctions, the Court of Justice notes that the order concerns provisional measures. The measures are meant to avoid serious damage to the legal order of the EU and protect the values such as the rule of law. The order is applied until Poland complies with the obligations or if the country is not able to do so, until the date of delivery of the final judgment which the Court will deliver later. Other important mention in the order is that if Poland does not obey the judgement, the Commission can bring further action in addition to the sanctions. Only time will tell what kind of impact the sanctions have and will the state of rule of law change in Poland.

The new financial sanctions show that the European Union is taking further steps in order to protect the rule of law. The Poland is paying sanctions daily and the EU is initiating sanctions for Hungary as well mainly because of the corruption in the country (Sutinen, 2022). It is understandable that the EU is cautious with the level of the sanctions after the resignation of the United Kingdom. Nevertheless, if the EU wants to strengthen the rule of law, the actions towards disobeying countries should not be light. The problem is that the EU's legal structure limits the sanctioning possibilities. For example, trade restrictions would be a great sanction tool, but they are internal policies that are governed by specific treaty rules. (Closa, 2021.) Still, it is good that the sanctions give a warning message to other countries that might not obey the rule of law (Dimitriu, 2019).

#### 4.2.4 The Efficiency of the Tools that Protect the Rule of Law

The EU's tools to protect the rule of law are not complete. Even though the government of Hungary have violated the EU's fundamental values, the financial support from the EU is one of the main reasons why the Party is still in power (Oliver & Stefanelli, 2016). The European Union has fought against the violations of the rule of law for a decade which shows that the problem is not easily fixed.

Nevertheless, the EU has many means to tackle the rule of law violations through different articles. For example, a disobedient member country can be brought to the Court of Justice of the European Union and some rights of that country can be taken away. However, these actions are rare since the member countries are not willing to place sanctions on each other. In addition, the leaders of these countries are afraid that their country will be next on the line to be under inspection. (Monciunskaitė, 2022.) Article 7, which is about restricting the rights of a member country that does not obey the rule of law, needs third of the member countries, Parliament, or Commission on its side. The restrictions that the Article 7 enables, are for example taking away the right to vote from the representative of the government of that Member country in the Council. (European Union, 2012.)

Suspending certain rights does not mean dismissing a country from the EU but it works as a mechanism to caution and advice member countries. The idea is to supervise these countries, not to restrict them. However, Smith (2019) points out that the EU should not only point out the disobeying member countries but also to examine itself. The EU should decide whether the rule of law is a policy tool or a value. The difficulties will continue if the Commission and the Court of Justice of the European Union carry on defending the rule of law as an instrumental policy tool and at the same time, a value that mirrors the EU what it wishes to be. Again, defining the rule of law resurfaces.

### 4.3 Why the Rule of Law Needs to Be Protected?

As the formal president of the United States, Dwight D. Eisenhower stated, the clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law." (European Commission, 2015). The rule of law is a key element of democracy, and it protects the nation from arbitrary tyrants (Meierhenrich & Loughlin, 2021, p. 25). In other words, without the rule of law there would not be any guarantees that every individual would be equal in front of law or that everyone's life would be valued, respected, and protected. Democracy enables people to be part of the politics and decision-making as well as makes the development of society more accessible.

Rule of law needs to be protected because it brings political stability, security, and international peace (United Nations, 2022). Political stability is important for the European Union because it enables investments and supports EU's financial interests. Also, for the EU's competitiveness between China and the United States political stability is crucial. In order to be part of international assemblies and agreements EU must present a stable, secure political picture of itself. Maintaining international peace is important not just itself but also for the international relationships and enlargement policies.

Rule of law protects freedom of media, judicial independence, and fight against corruption (Mahmutovic, 2021). Rule of law needs to be understood and implemented in national courts so that the member country has freedom of media, and the EU funds go where they are directed to and not for example to some politicians. Without freedom of media people cannot get objective information about the EU or their country's governments. Rule of law is the DNA of the European Union, and it is what connects all the member countries to each other (Magen, 2016). Judicial independence protects individual's rights, and the power of decision is not arbitrary. Every decision is based on the law that is rightfully set. The rule of law is not only crucial for the member countries, but it also has a huge meaning for the Union's foreign policy even though it acts more as a

value to be imported and not forced or tied to a law (Pech, 2010). Still, values should not be disparaged. After all, they are the base for any state of institution.

One of the main answers why the rule of law should be protected is that the importance of it becomes visible only when the rule of law is threatened (Merdzanovic & Nicolaidis, 2021). For example, rarely someone who has safe life and feels oneself being equal with people around, thinks about human rights. We miss something only when we lose it. That gives more reasons to protect the rule of law. When the rule of law is threatened, all the principles – justice, fairness, and equality, that the liberal democracy is build on, are also in danger. Because of rule of law, every individual has the possibility to make decisions without any fear as long as the decisions are consistent with the liberties of other individuals. (Merdzanovic & Nicolaidis, 2021.)

The rule of law acts as an instrument as well to examine for example state's law or condition of democracy. "The rule of law is not only a political ideal which a legal system may lack or possess to a greater or lesser degree, but also one of the virtues by which a legal system may be judged and by which it is to be judged" (Pech, 2010). To conclude, the rule of law should be secured because it protects the whole legal system, democracy, human rights, fight against corruption and international peace. All in all the rule of law is important for the EU and its member countries because no country can thrive without it.

#### **4.4 Current Issues Concerning the Rule of Law**

This chapter will focus on the difficulties the rule of law is facing up to in the European Union. Since the early 2000s the European Union Commission has failed to stop the decline of the rule of law in some of the member countries (Monciunskaitė, 2022). Especially the neglect of the rule of law in member countries such as Poland and Hungary have been on-going menace for the EU (Mahmutovic, 2021).

Firstly, the research will study the problems the EU is having, and later in the text, the research will concentrate on the situation in Poland and Hungary. Kochenov (2018) argues that the vulnerability of the rule of law is largely caused by the issues in the EU's systems and institutions. The problem lies in the differences between the EU's proclaimed constitutional structure that is found in the Treaties and the reality of the integration that is happening at the moment. Thus Kochenov (2018) doubts if the EU itself is not obeying the rule of law by not reaching its own qualifications of the rule of law.

It is understandable that the development of the rule of law is disordered since the Union holds distinct types of countries as members. The basic principles of the rule of law are still understood indeterminately which is a huge issue for the EU's legitimacy (Meierhenrich & Louhgin, 2021, p. 129.) When some countries are unwilling to understand the importance of the rule of law the EU does not have the correct tools to react to them (Smith, 2019).

The Union's structure is not the only one to cause damage to the rule of law. Corruption and how it is defined differently in member countries is still a huge issue for the EU. Also lack of freedom of media and the rise of populist politicians are affecting on the EU today. (Mahmutovic, 2021.) Populism is enormously dangerous for the rule of law because it generates risks through agenda-setting, policy impact, the shaping of discretionary decisions and convention-trashing (Meierhenrich & Louhgin, 2021, p.473.) The citizens of the European Union also play a significant role in judging the EU itself. Weak rule of law affects the EU and the citizens, so the big challenge for the EU is to legitimize itself in front of the people the best conceivable way. (Baratta, 2016.) It is especially challenging for the EU to encourage the citizens to join deliberative democracy when the Union might not be as close to the people as the countries.

As mentioned previously in the theory, one of the biggest struggles the rule of law is facing in the European Union, is that the definition is still unclear. The EU could define the rule of law explicitly in a treaty. (Ovadek, 2018.) When the rule of law is well defined

and understood, the EU can be more integrated. Sharing values without consensus does not lead into any action that would be positive.

Even if the concept of the rule of law would be understood and shared among the member countries, the mere formal observance would not be enough. If the EU wants to promote the rule of law, it needs to make sure that the rule of law reforms are known everywhere and that the EU gets involved in disputes. In this way the EU can make sure that resistant parties move from formal observance to an authentic change in practice. (Webb, 2018.) The annual Rule of Law Report is a good start, and it should not become just a obligatory paper that keeps the rule of law in the surface but also truly focus what needs to be done in order to protect the rule of law.

The two different definitions for the rule of law, thick and thin, as previously explained are also one of the problems the rule of law is having. The thin conception stays too closely to legality while the thick conception leans too much towards fundamental rights and democracy. In other words, it is unclear whether EU wants the rule of law to be legal system where laws are applied and enforced or where there is connection between the rule of law and fundamental rights. (Ovadek, 2018.) Clearly some member countries do not share the same views and definitions about the rule of law.

Because the EU has not clarified the meaning of the rule of law, some member countries get to argue that the rule of law is too open to be used as a benchmark which means basically that they can act high-handed (Kochenov, Magen & Pech, 2016). The European Union is the one to show an example; The member countries work as a mirror of what the European Union truly is. Some acts towards making the rule of law stronger in the EU have had good meanings but bad outcomes. For example, rewarding for conscientiousness has increased formal change and not genuine or valuable deeds for the rule of law (Webb, 2018). The idea of a value is that there are not any rewards for doing the good but to know that by doing the good and only the good is the right way.

Other challenge the European Union faces is that the Union's network is weak. Rule of law should be "everywhere," and the EU should cooperate with other countries as well. Because the rule of law has been polarized for a long time in some member countries and there have been renovations with the law reforms, the Commission has had a change to strengthen its ability to act. (Coman, 2016.) While the EU has multiple well working institutions that are designed to strengthen the Union and take care of the rule of law, perhaps the EU could evolve its network as well. After all in the hopes of political and economic stability the European Union has promoted democracy, human rights, and the rule of law to its next-door neighbour (Börzel & Risse, 2004).

#### **4.4.1 The Critic Against the Council of Europe**

One of the main issues mentioned in earlier studies is the role of the Council of Europe. Council of Europe describes itself as the leading human rights organisation in the Europe that includes forty-six member states, from which twenty-seven are EU members. The Council of Europe assists the countries to reform a constitutional state. Group of constitutional experts called The Venice Commission gives legal advice to countries. (Council of Europe, 2022.)

The Council of Europe has been under critic because of their lack of action when the rule of law is threatened. The Council of Europe is not in line with the other EU institutions and the main issue with the Council of Europe is that it has allowed certain member countries to disobey the rule of law without any penalties. (Oliver & Stefanelli, 2016.) In order for the EU to be politically stable all of its institutions should be in line with the conception of the rule of law. The authority of the institutions such as the Council of Europe weakens if the violations of the rule of law are not taken seriously.

The strategic partnership between the European Union and the Council of Europe could deepen with the initiative of the rule of law (Polakiewicz & Sandvig, 2017, p. 523). In other words, the rule of law is the pathfinder for the future of the European Union. To

strengthen the rule of law the Council of Europe needs also to focus on how to make the rule of law stronger rather than focusing on the technical questions and which EU-institution is supposed to manage the problems (Kochenov, Magen & Pech, 2016).

Council of Europe has increased dialogue between the member countries in hopes of strengthening the rule of law. While this dialogue is mainly positive – the conversation extends to other countries as well – there are some more negative aspects as well. For example, Baratta (2016) fears that the dialogue is too formal, and it does not secure obeying of the rule of law. Also, his argument comes back to the fact that the EU has not identified the rule of law clear enough in the treaties. The problem is that there is not any certainty that every country understands the concept of the rule of law similarly. However, the EU could define the rule of law to suit its specific features of its autonomous legal order (Pech, 2010).

#### **4.4.2 Hungary and Poland**

The state of the rule of law in the member countries Hungary and Poland have been a thorn in the EU's side for a long time. Many countries share the same view on what the future of the EU should look like; The EU should stay as a union of states that's core is the rule of law, democracy, and human rights. Nevertheless, Hungary and Poland challenge this view. (Monciunskaitė, 2022.)

Hungary has multiple issues that affect the rule of law. According to Oliver and Stefanelli (2016) the most solemn human rights violations committed by a member country have taken place in Hungary under the power of the Fidesz Party since 2010. After that the country has made several changes to its fundamental constitutional structures and division of powers. These changes have diminished the constitutional court, data protection agencies the parliament, independent judiciary, and media. Many of the EU's values are being despised, such as freedom of religion and rights of minority. (Smith, 2019.) All of

these issues certainly weaken the rule of law not only in Hungary, but they also weaken the whole of Europe.

In fact, the so called Western liberal conception of the rule of law that Miklossy (2018) describes as a concept that trust the Montesquieu's separation of powers, individual freedom, checks, and balances is incompatible with the Hungarian understanding of the rule of law. The country has ill-assorted legal and political traditions and weak institutions to support the rule of law. (Miklossy, 2018.) In Poland, the authorities have violated numerous times the Constitution and EU law in hopes of bringing back the Soviet-style justice system (Pech, Wachowiec & Mazur, 2021).

The biggest issues started when the Hungary's government replaced the Constitution to the Fundamental Law which for example restricted the jurisdiction of the Constitutional Court and allowed two-thirds majority of Parliament to overrule its decisions. There where no coercion and only few demonstrations which creates quandary for the EU. (Neuwahl & Kovacs, 2021.)

In Poland similar violations against to the rule of law has been made. The Party in power called Law and Justice have threatened the free speech and interfered with the Constitutional Court (Oliver & Stefanelli, 2016). The inscription in the Lisbon Treaty of national identity as one of the EU's values has limited the possibilities for the EU to take an action. Also, the resistance of several Member States and 'domestic matter' defence has slowed down the EU. (Neuwahl & Kovacs, 2021.) In addition, the Commission has not been able to defend the Treaties because of indecision and delays (Monciunskaitė, 2022).

#### **4.4.3 Struggles Unifying the Concept of The Rule of Law**

As John Rawls has stated, "Many of our most serious conflicts are conflicts within ourselves. Those who suppose their judgements are always consistent are unreflective or dogmatic." (1921). As well as discovered earlier in the text, the EU's some of the biggest

challenges in strengthening the rule of law are coming from the inside of the Union. The EU has not been able to build interaction or back and forth discussion inside the Union or between other institutions (Webb, 2018).

The rule of law has been undermined by some of the member countries for several years and extraordinarily little has been done. If the EU is eager to welcome new countries to join the Union, already existing member countries should be on hand. The EU can not have more countries that do not obey the rule of law. The rising populism is threatening the rule of law in the EU as well and the key to democracy, participation, is declining (Gora & de Wilde, 2022). The political leaders of Hungary and Poland are not only using populist methods but also reshaping the constitutional setting and thus being a threat to the rule of law (Rech, 2018).

Multiple scientific articles come back to the difficulty of understanding the rule of law. The dissimilarity of understanding the rule of law can be huge in member countries. An interesting point that Magen (2015) makes is that instead of trying to form a strategy that is based on conformity, the EU should accept that there is growing variation. Meaning that the countries are not coming closer to each other but in fact growing apart. Surely the social and political changes affect in whether the countries are united with the rule of law or not. Also, the EU has an enormous impact on the rule of law and how it is perceived. The concept of the rule of law is changing and it must be kept in the conversations as well as observing its state regularly. Although the rule of law could be seen as an intrinsic value and good itself it does not mean that the EU cannot improve and make it more precise. As said, "it is impossible to devise, for any given situation, a simple rule which will apply to everyone forever" (Meierhenrich & Loughlin, 2021, p.37).

The difficulty lies where values and laws are working hand in hand. Meaning that values should be understood and put into practice because the member countries agree that they are important and valuable themselves. At the same time values are not enough to safeguard the rule of law. Therefore, the EU needs to have laws to protect the rule of law

as well. Issues in the member countries regarding the rule of law have shown that some member countries do not share common values. “Behind mutual recognition stands mutual trust” (Closa & Kochenov, 2016), meaning that when member countries trust in each other and their respective legal systems, the base for the Union is built. To protect the rule of law, the EU needs to put effort in building trust inside and between the member countries.

#### **4.5 How to Strengthen the Rule of Law?**

To find ways to strengthen the rule of law it was necessary to examine first the EU’s instruments regarding the protection of the rule of law in member countries. Secondly, it was important to examine why the rule of law is important for the EU. Also, the current issues the rule of law is facing were studied. All of these concerned strengthening the rule of law and the aim of this chapter is to build on overall understanding of how to strengthen the rule of law in the European Union.

When ruminating how to strengthen the rule of law one must look beyond the rule of law. EU needs to focus on the wider spread of democratic values among the public and the elite (Webb, 2018). It is understandable that the rule of law can not thrive if the member country is not used to democratic means. In the eyes of the rule of law every individual is equal. The rule of law will not be fulfilled if the holder of the power is high-handed elite. To strengthen the rule of law the member countries need to have strong bureaucratic conditions of competence and neutrality as well as tools such as working institutions and adequate financial competence to run the rule of law, Webb (2018) continues. Even though this might seem self-evident when for example candidate country is being evaluated, it is important not to forget these conditions even when the country is already a member of the EU. It should not be so, that when a country is accepted to be a member, the truthful evaluating ends. The European Union should have genuine tools to affect the state of the rule of law in member countries where the rule of law has declined. Nothing but scolding is not enough to guarantee the rule of law.

To strengthen the rule of law, the EU needs several means to promote it. Börzer and Risse (2004) offer three ways for the European Union to promote and strengthen the rule of law that are still relevant in the EU's strategy. First of all, membership is still the best way to promote the rule of law. EU's enlargement policy needs consistency and even though the candidate countries might be different, they need to follow the rule of law so that the EU can be strong and united. Other tools to promote the rule of law is financial inducements and programmes for capacity-building. The authors call attention to the fact that the EU's previous rule of law promotion strategies have focused on the idea that "one size fits all," meaning that the EU believes that the rule of law is made for every country and the location does not matter.

Since the member countries are different from each other and they have their own views on the rule of law, they should still have something in common. Baratta (2016) emphasizes the importance of the relationship between the rule of law and the principle of mutual trust. Court of Justice has modified the mutual trust as a constitutional principle. If a member country does not obey the rule of law, other member countries could act under the Court of Justice's control. Then again, this action has been rarely used. Still, it is important to remember that the rule of law is complex legal concept where the member countries activity is being appraised. (Baratta, 2016.)

There is a paradox in the strengthening the rule of law. The European Union needs to talk more about the rule of law and define it more precisely. At the same time, the concept of the rule of law has become trivial and vague because of ideological exploitation and over-use (Meierhenrich & Louhglin, 2021, p.569). Still the truth is that the rule of law is being disparaged in some member countries and if the EU wants to save the rule of law, actions need to be taken. While the rule of law should be more defined, some contend that the excessive legislation is one of the main obstacles of the rule of law (Leoni, 2012). It would be beneficial for the Union to have collective direction on where to go with the rule of law.

As previously examined, the research question “How to strengthen the rule of law?” turned out to be extremely complex. Several studies that analysed the state of the rule of law in the European Union have focused on the negative aspects that weaken the rule of law rather than mentioning what would strengthen it. Although both angles have equivalent results, I believe that observing what has been done wrong in the past and contemplate what should be done in the future is the best way to give answers on how to strengthen the rule of law. Also, the EU’s own report on rule of law (2021) is a constructive and a terrific way for the EU to examine its own actions and have a dialogue with the member countries.

The rule of law is complicated and there are multiple concepts of it. The EU needs to define the rule of law better in order to strengthen it. Also, to have integrated Union the EU needs to develop the interaction with its member countries and build a stronger network. As seen in the Rule of Law Report (2021), the EU has already made a lot of progress and the EU understands where it is at the moment. Because the rule of law is crucial for any state of institution, it is important to look at it critically.

#### **4.6 Future of the Rule of Law**

It is crucial that the EU takes course for the future because without a vision, the EU will be looked down by those countries who do not want it to get involved and at the same time by those who want it to act determined (Neuwahl, 2020). The rule of law moves on a three different level, in a law book where it is defined, in institutions where it is shaped, applied, and enforced and with politicians and power structures, where it is defended or resisted by the personal or communitarian reasons or because of power politics (Merdzanovic & Kalypso, 2021). Balancing and finding solutions from these three levels will not be easy for the EU.

Merdzanovic and Kalypso (2021) request that the EU should move from strategies to constant evaluation of the state of the rule of law. This evaluation would concentrate on

the well-being of the citizens and react right away if the citizens are being oppressed. With the constant evaluation, the new rule of law adaptations are handled more efficiently. This certainly would keep the rule of law on the surface and the countries that violate the rule of law would not be forgotten. The constant evaluation and distinct rule-book would show clearly what happens if there are breaches in a member country's rule of law.

The challenge for the EU is to have all the member countries or at least most of them on the same page because the actions cannot be taken when they do not have enough members defending them. Even though the previously discussed Rule of Law Report (2021) does not have sanctioning powers itself, it is a great tool to help with the possible sanctioning measures. The Report works as a public record of existing offences. (Monciunskaitė, 2022.)

Lenaerts (2020) believes that in the near future the Court of Justice will make the guarantees clearer how a national court will remain independent. This will strengthen the foundations of the EU system of judicial protection. The principle of judicial independence must be conserved so that the rule of law and democracy can thrive. In the future, the EU must not count on dialogue alone because Poland has shown that its authorities will violate the rule of law when it gets any opportunity for it. If the problem continues, Poland is leading the unravelling of the EU's interconnected legal order. (Pech etc, 2021.)

According to Emmons and Pavone (2021), the EU is understood as a polity built through crises and the EU is often stuck on doing nothing. The biggest crisis of the EU is the rule of law crisis because it is tied to the institutional architecture. If the policymakers understand this, they might push more action on behalf of the EU. The financial sanctions are a great start for strengthening the rule of law. It is for the future to tell if the EU will consolidate the concept of the rule of law and will the EU be more confident in taking actions towards the member countries that violate the rule of law.

## 5 Summary

The focus of my research was to study the rule of law in the European Union and find ways to strengthen it. After searching information about the rule of law, one can see that the definition of the rule of law has different nuances in every country and the EU is trying to build common definition for the rule of law. The rule of law is the base for the EU and one of the main values.

The rule of law was established all the way back in Athenian democracy. There have been various research about international rule of law but since the European Union is unique and still young union, there is a need for studies about the rule of law in the EU. The state of the rule of law is in a constant change; the EU clarifies the concept of the rule of law by binding it to laws and treaties. Also there have been changes in the member countries on how they view the rule of law.

The main element for the rule of law is legality. A government must obey the laws and there must be an independent judiciary that inspects the legality of the government. The individuals need to have the right to take actions against institutions by means of the judiciary. The rule of law is crucial to political stability, security, and international peace. The laws must be publicly declared, equally executed and individually solved. The rule of law protects the people from arbitrary power.

The rule of law is a contentious concept. The simple division of the rule of law can be divided into thin and thick conceptions. The thin conception of the rule of law means that the concept is only used as a tool for government's actions, and it is too vague to provide righteous outcomes. The thick conception of the rule of law on the other hand, contains more information than the thin conception. The thick conception holds more requirements about the law. In other words, thick conception gives tools to execute the law more profound but at the same time it is far from practicality. The problem with both conceptions is that they are trying to either limit the rule of law or make it too extensive.

The rule of law is complex, and it should be carefully defined, so it does not become an assembly of everything wished from a political system.

The core of the European Union is the rule of law. Every institution of the EU and every action the EU makes is based on the treaties that the member countries have agreed to. The Court of Justice has the final jurisdiction, and it supervises the institutions. The rule of law protects freedom, fairness, human rights, separation of powers, legal transparency, and anticorruption. The rule of law is also cardinal for the EU's enlargement policy. In order to have integral Union, the member countries must obey the rule of law.

If the rule of law is violated the EU has different strategies to strengthen it. The Rule of Law Report (2021) explains thoroughly the state of the rule of law in the member countries and it shows what the EU has done to strengthen the rule of law as well. The Report is published every year which already shows that the EU attaches significant importance to the rule of law. The EU reports the positive and negative developments in member countries through three different areas: the justice system, the anti-corruption framework, and media pluralism. To strengthen the rule of law, EU for example invested in 2021 in digitalisation and justice systems.

Corruption is one of the main issues in some member countries and the EU is trying to find ways to tackle it. The EU made it illegal to accept or offer unjustified benefits and removed obstacles to the effective rule of complicated corruption cases. The concept of corruption can vary in different countries and the EU must make new regulations to eliminate corruption. While doing the anti-corruption work, it is also important that the meaning of corruption is not being overused for example in politically motivated cases.

In addition to the Rule of Law Report, the EU is strengthening the rule of law with the Rule of Law Framework and treaties. The Framework is initiated in a rule of law crisis. It is based on a dialogue with the member country that does not obey the rule of law. The rule of law framework is divided into three stages: Commission assessment, Commission

recommendation and monitoring of the follow-up to the Commission's recommendation. The issue with the Rule of Law Framework is that it does not lead to actions, but it is more a notion to the disobedient country.

If the rule of law violations expand, Article 7 TEU is meant to restrict the rights of a concerning member country. Article 7 is rarely used because it needs third of the member countries, Parliament, or Commission on its side. Compared to the previous strategies on strengthening the rule of law, in 2021 the European Union can financially sanction member countries that violate the rule of law. Poland's authorities have violated the Constitution and free speech. Poland pays daily penalties to the EU and mainly because of corruption in Hungary, the EU is initiating sanctions for Hungary as well. Hopefully, the threat of sanctions is strengthening the rule of law already by itself.

To have a strong rule of law in the future, the EU must be a clear and powerful leader. The state of the rule of law needs constant evaluation that concentrates the well-being of the EU-citizens and have functional tools to react to the rule of law violations. The definition of the rule of law is still unclear and it differs in member countries. The EU could define the rule of law precisely in a treaty. It is understandable that the stronger the EU is when the member countries are on the same page.

The European Union should also focus on the network. When the EU has multiple institutions, the visions for the rule of law might seem unclear. Promoting rule of law is a great tool in enlargement policy and financial inducements could bring interest towards the rule of law. The difficulty with promoting the rule of law is that the EU does not have enough means to intervene member countries governments.

The rule of law is a key element of democracy, and it brings stability, security, and peace to Europe. The rule of law is the glue in connecting the member countries to the EU and it protects the legal systems. The importance of the rule of law is visible only when it is threatened. Fortunately, the European Union is monitoring the rule of law in the

member countries regularly and reporting the state of the rule of law yearly. The concept of the rule of law should be defined for the Union and at the same time, making sure that the meaning of the rule of law is not weakened.

## 6 Conclusion

the primary purpose of this master's thesis was to figure out:

*How the European Union defines the rule of law and how to strengthen the rule of law?*

The theses started with the theory, which was the rule of law. I studied first the international rule of law and quickly realised that since the EU is so unique it has also own definition for the rule of law. The EU also needs own treaties and legislation on the rule of law. The conception of the rule of law turned out to be quite difficult to form because the rule of law is complex and even similar countries have different definitions for the rule of law or at least they emphasis different meanings of the rule of law.

The materials used in the research were scientific articles and the European Union's own website, documents, and treaties. The challenge was to principally use new and current materials since the situation in the EU changes quickly and especially the rule of law and how it is put into practice alternates. During the research, I also understood that there is always something new happening in the Union; the EU reflects the society, and it is a magnificent network that connects the member countries with their own governments, cultures and conceptions of the rule of law to the EU's equation. The European Union is still quite young, so it is understandable that there are issues with building a common ground with countries that have a long history and ancient cultures.

After studying how the rule of law is defined and especially what the rule of law means to the European Union, the research focused on how to strengthen the rule of law. The rule of law needs to be strengthened because the main issues in the EU are the rule of law violations especially in Poland and in Hungary. In the past decade the EU has not been able to protect the rule of law. There has been fears of all kinds of "exits" or other major frictions with the member countries. The rule of law is the heart of the European Union, and such value should be protected. When in 2021, the EU started to sanction

Poland financially, the change in the course might have begun. I am eager to see what kind of impact the sanctions have and will the rule of law become stronger. The uncertainty in Europe might also bring the disobedient member countries closer to the European Union.

Most of the previous research concentrated on what the EU has done wrong in the past or why the rule of law is at stake. The aim of my research was to understand what problems the EU has had in the past but also to open possibilities to develop the EU so that the rule of law could be stronger. I tried to connect various research about the state of the rule of law in my thesis and understand their view on how to strengthen the rule of law. The difficulty with connecting the articles and creating a study on how to strengthen the rule of law was the fact that the articles focused strongly on a very specific area of the rule of law in the EU. For example, some of the topics were mutual trust in the EU, conditionality of EU funds, illiberalism and corruption in the member countries and erosion of the rule of law.

When this thesis wanted to form a manual or a playbook on how to strengthen the rule of law in the EU, it had to be built with specific studies surrounding the rule of law. Still, I believe that it was good to study the rule of law from different views and contexts. After all, the rule of law is extremely complex and there is not an easy answer on how to protect it.

Because the goal of the research was to figure out how the EU can protect and improve the state of the rule of law in the Union and in the member countries, the study addressed the definition of the rule of law, the tools EU has already to protect the rule of law, current issues in the EU that concerns the rule of law and the views on what should be done to strengthen the rule of law. To examine the existing state of the rule of law in the EU the research needed to also study the rule of law violations in the Poland and Hungary.

The research intended to build on understanding of the rule of law in the European Union and give relevant tools to strengthen the rule of law. The EU has its own strategies to protect the rule of law, but the studies show that there should be more means to strengthen the rule of law. It was exhilarating to be able to study the financial sanctions in this thesis because it was so special and current for the EU. Because the possibility of the financial sanctions for the member countries that violate the rule of law are so new, there is not many studies or proof of their effectiveness.

After all, one of the main challenges for this thesis was to build an understanding of the rule of law in the European Union. It seemed that almost every chapter needed to mention, that the definition of the rule of law is unclear. Even though the concept of the rule of law is ancient, it is difficult to comprehend what it means to the EU nowadays. The meaning of the rule of law should not be overused but also at the same time, it should be kept topical.

Other difficulty for this thesis was to delimit the topic. When there are multiple concepts of the rule of law, it was difficult to decide what concept to use. Sure, the EU's concept of the rule of law was meant to be the main topic, still I felt that when defining the rule of law, it needs to be looked from many directions and the EU's rule of law is connected to the international rule of law. Also, through out the research I realised how difficult it is to find ways to strengthen the rule of law in the EU. Most of the previous studies concentrated on what the EU has done wrong in the past concerning the rule of law.

Because this thesis gave an overview of the rule of law in the European Union and focused on finding ways to strengthen the rule of law, future research could deepen the topic and try to define the concept of the rule of law even more. The state of the rule of law changes constantly in the EU, so it is fascinating to see what happens in Poland and Hungary. Studying the member countries views on the rule of law could also give new tools to strengthen it. Future research could examine more resources and build a clearer view of the rule of law in the EU. The means to strengthen the rule of law could also be

for example ideas for new treaties or calculate are the financial sanctions large enough for them to have an impact on the member countries rule of law.

The rule of law will be topical tomorrow as well. There are multiple possibilities for the future of the European Union and arguably the most desired ones have stronger rule of law. With reports, frameworks, sanctions, and dialogue about the rule of law the EU shows that it is determined to strengthen it. Despite the fact that the rule of law has faced severe violations in the EU, it is still not beyond repair.

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