Opinion of the European Economic and Social Committee on 'Communicating fundamental rights and the rule of law'

(Own initiative opinion)

(2023/C 100/04)

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(for/against/abstentions)	199/3/4

1. **Conclusions and recommendations**

1.1. The European Union is based on common values, as stated in Article 2 TEU: the values of human dignity, freedom, democracy, equality, the rule of law, human rights, pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women. The rule of law and human rights are part of the European identity.

1.2. Moreover, the Charter of Fundamental Rights, an essential and binding document, states that the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity, and is based on the principles of democracy and the rule of law ([1]). Strengthening the application of the Charter is both an obligation and a meaningful way to protect people and make them aware of the importance of the rule of law and fundamental rights protection. While the Committee endorses all efforts across these dimensions, it emphasises the need for all EU institutions to actively communicate directly to the general public. The rule of law and fundamental rights are crucial and must become part of the shared civic and democratic culture on the continent.

1.3. The Venice Commission of the Council of Europe offers a clear description of the key principles covered by the rule of law: legality, legal certainty, prevention of abuse of powers, equality before the law and non-discrimination, and access to justice ([2]). These are clear criteria for assessing the conformity of any State action with the principles of the rule of law, and have been endorsed by the Court of Justice ([3]).

1.4. The EESC urges all EU institutions to demonstrate zero tolerance for rule of law breaches in the Member States. The EU has a legal duty to uphold the rule of law and protection of fundamental rights, regardless of the intentions of various political actors which may run counter to that aim.

([1]) Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391), Preamble.
([2]) *Venice Commission of the Council of Europe, The Rule of Law Checklist, adopted at its 106th Plenary Session, 2016.*
([3]) Judgment of 16 February 2022, Poland v Parliament and Council, C-157/21, EU:C:2022:98 CJEU ruling, para. 325.

1.5. The EESC points to the Court ruling whereby the budget is one of the instruments which give practical effect to the obligation of all Member States to abide by the core values of the EU, including the rule of law and respect for human rights ([4]).

1.6. The European Commission's Annual Rule of Law Report is a valuable instrument which can prevent backsliding in democracy, the rule of law and fundamental rights protection. However, it has to be reformed in order to achieve its aims. It should be adjusted to include all the Article 2 TEU values, legal and/or financial actions when country-specific recommendations are not fully addressed, and a fifth pillar dedicated to monitoring national developments relating to civic space ([5]).

1.7. The EESC has already underlined that civil society plays a key role in preserving democracy in Europe, and that only a strong and diverse civil society can defend democracy and freedom and preserve Europe from authoritarianism ([6]). Moreover, there is no rule of law without democracy and fundamental rights, and vice versa; the three concepts are intrinsically linked ([7]). Hence, the EESC urges all concerned parties to stop conversation of so-called illiberal democracy, even to criticise the concept. There is no democracy without liberal principles.

1.8. More stakeholders should be involved in the efforts to make the rule of law a more tangible reality: the social partners, professional organisations such as Bar and Law societies, and grassroots organisations that work with vulnerable people and communities at greater risk of harm, disadvantage and discrimination.

1.9. The rule of law and human rights can be perceived by some as excessively abstract, distant, jargonistic and legalistic concepts. Communicating the rule of law effectively requires focusing on shared values and relatable concepts of fairness and justice. Telling a human story by showing the human face and the person behind the evidence, as well as statistics, can also help.

1.10. The EESC calls for Member States to mainstream the rule of law and fundamental rights in schools and higher education. Civic education should be compulsory, start as early as possible and be taught for a significant number of years. In addition, EU and national resources have to be provided for the proper training of civic education teachers.

1.11. The human rights framework is built on the principle of accountability, and therefore requires measures to identify who is responsible for what outcome, and to identify desirable policy changes. It is also important to identify issues of broad interest to the general public, such as access to energy, transport, regional equality, work, housing, healthcare and various other public services, at local, regional and national level.

1.12. Human rights protection and the rule of law are strengthened by a strong welfare state, regardless of the various forms it may take across Europe. This interconnectedness is recognised by the European Pillar of Social Rights, an essential policy tool for building a more inclusive Union.

1.13. Grassroots movements and people with lived experience of poverty must be at the centre of a democratic case for human rights. There is no better way to defend human rights, particularly social rights, than having the voices of the people most affected by inequality, poverty and social exclusion heard in public spaces and policy debates.

([4]) Poland v Parliament and Council, C-157/21, para. 130-131; Judgment of 16 February 2022, Hungary v Parliament and Council, C-156/21, EU:C:2022:97 CJEU ruling, para. 116-117.

([5]) Laurent Pech and Petra Bard, Rule of Law Report and the EU Monitoring and Enforcement of Article 2 TEU Values, Report for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs and the Committee on Constitutional Affairs, February 2022, pp. 12-13.

([6]) Opinion of the European Economic and Social Committee on 'Resilient democracy through a strong and diverse civil society' (own initiative opinion) (OJ C 228, 5.7.2019, p. 24).

([7]) Opinion of the European Economic and Social Committee on 'The European control mechanism on the rule of law and fundamental rights' (own-initiative opinion) (OJ C 34, 2.2.2017, p. 8).

2. **General comments**

2.1. The EESC recalls the position expressed in its opinion SOC/598 (2018): 'The rule of law is interdependent and indissoluble from guarantees protecting pluralist democracy and respect for fundamental rights. The rule of law ensures that governments respect fundamental rights standards, and pluralist democracy ensures that governments pursue policies that advance their peoples' well-being. Upholding the rule of law by itself does not guarantee that the law respects fundamental rights, nor that that law is made according to an inclusive and legitimate process based on well-informed, pluralist and balanced public debate and participation. To avoid mere "rule by law", it is necessary to uphold fundamental rights and pluralist democratic standards alongside the rule of law.' ([8])

2.2. As observed in the Commission's 2021 and 2022 Rule of Law Reports, preserving citizens' trust in public institutions and the rule of law requires, among other things, the existence of an independent judicial system, with effective judicial review to ensure compliance with EU Law; a strong public commitment to fighting corruption and ensuring democratic accountability; media pluralism and media freedom, including transparency of media ownership; transparent constitutional and institutional mechanisms to ensure checks and balances, with active participation from civil society; and strengthening international cooperation for sustainable development, human rights, democracy and rule of law ([9]). In the 2022 Report, the Commission also highlights the significant threats to the EU values and the rule-based order of Russia's aggression against Ukraine, an aggression which grossly violates international law and the principles of the UN Charter and undermines democracy as well as the rule of law, in addition to European and global security and stability ([10]).

2.3. No democratic and representative norm can be invoked to legitimise rule of law and fundamental rights breaches. The EU institutions, and the European Commission in particular, must use all instruments at its disposal to restore the integrity of the EU's principles.

2.4. By monitoring the situation on the ground, civil society organisations and human rights defenders have an essential role to play, particularly when rule of law deteriorates and human rights are under attack ([11]). Authoritarian governments threaten civil society organisations not only by shrinking and shifting the spaces available for their activities but also through personal threats and persecution, financial restrictions, or inadequate protection against physical or verbal attacks ([12]).

2.5. As previously stated, the overall capacity of civil society organisations and human rights defenders to work within the Charter of Fundamental Right framework should be significantly strengthened through a package that includes training and knowledge transfer, organisational and financial support, and protection from attacks and negative campaigns ([13]). To this end, the EESC encourages the Commission to propose a comprehensive European civil society strategy to guide the collaboration, capacity-building efforts and effective communication of rule of law and fundamental rights.

2.6. The EESC considers the work of civil society organisations and human rights defenders essential in helping vulnerable groups cope with serious challenges to their safety, well-being and dignity. All people could one day find themselves in a position of vulnerability. In many cases, the sources of vulnerability overlap and result in structural marginalisation and discrimination.

([8]) Opinion of the European Economic and Social Committee on 'Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States' (COM(2018) 324 final — 2018/0136 (COD)) (OJ C 62, 15.2.2019, p. 173).

([9]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2021 – Rule of Law Report The rule of law situation in the European Union (COM/2021/700 final).

([10]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 – Rule of Law Report The rule of law situation in the European Union (COM/2022/500 final).

([11]) Opinion of the European Economic and Social Committee 'Communication from the Commission to the European Parliament, the European Council and the Council — Further strengthening the Rule of Law within the Union State of play and possible next steps' (COM(2019) 163 final) (OJ C 282, 20.8.2019, p. 39).

([12]) Opinion of the European Economic and Social Committee on Populism and fundamental rights — suburban and rural areas (own initiative opinion) (OJ C 97, 24.3.2020, p. 53), point 1.6.

([13]) Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Strategy to strengthen the application of the Charter of Fundamental Rights in the EU' (COM(2020) 711 final) (OJ C 341, 24.8.2021, p. 50).

2.7. The rule of law and fundamental rights protection should be ensured in relation to democracy, especially the promotion of free and fair elections and strong democratic participation ([14]). Those who are in a position to challenge the rule of law also act against political opposition and independent mass-media. The EU Democracy Action Plan (EDAP) is a necessary step in this direction.

2.8. Social partners have a significant role to play in communicating the rule of law and fundamental rights. All workplaces are affected by the deterioration of the political and legal climate in a country. Businesses, SMEs and social enterprises cannot effectively function if the rule of law and fundamental rights protection systems are not in place. Social partners should commit to acting to improve their integrity and effectiveness. Workers must be free to form and join the trade union of their choice, and unions must be able to function freely ([15]). Workers and employers have the right to negotiate and conclude collective agreements and, in cases of conflict of interest, to take collective action to defend their interests, including strike action ([16]).

2.9. The Fundamental Rights Agency has a significant capacity to gather relevant information. It has already built a vast knowledge base which all interested actors can use. Its expertise is solid and it should provide the basis for enhancing its communication dimension. More resources should be granted to the Agency to engage in public communication in all the EU member countries. More cooperation is needed with specialist institutions like the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights (ODHIR).

2.10. The EU is also a global actor, whose responsibility to respect the rule of law and fundamental rights stands central to its international identity and role. All external policies, programmes, instruments and actions should reflect their centrality for the EU and the importance for a democratic and peaceful world.

3. **Specific comments**

3.1. *Positive narrative and framing*

3.1.1. Civic education on the principles of democracy, fundamental rights and the rule of law should be reinforced at all levels. The Commission should also continue promoting public awareness with an ambitious communication agenda ([17]).

3.1.2. The EU's founding myth alone is no longer enough to appeal to the people of Europe. The EU should propose narratives on a desirable future and revive key principles that have played a major role in the European project ([18]), including the rule of law and human rights. This is especially important in the context of the Russian military aggression against Ukraine.

3.1.3. The human rights framework is built on the principle of accountability, and therefore requires measures to identify who is responsible for what outcome and what desirable policy change. It is also important to identify issues of broad interest to the general public, issues such as access to transport, energy, work, housing, healthcare and various other public services, at local, regional and national level. One must go beyond the criticism of the situation that does not meet human rights standards, and describe the future that the rule of law and human rights can help build by inspiring positive associations in people's minds ([19]).

([14]) Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Democracy Action Plan' (COM(2020) 790 final) (OJ C 341, 24.8.2021, p. 56).

([15]) Article 8(1) of the International Covenant on Economic, Social and Cultural Rights.

([16]) Article 28 of the EU Charter of Fundamental Rights.

([17]) Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Democracy Action Plan' (COM(2020) 790 final) (OJ C 341, 24.8.2021, p. 56).

([18]) Opinion of the European Economic and Social Committee on Populism and fundamental rights — suburban and rural areas (own-initiative opinion) (OJ C 97, 24.3.2020, p. 53).

([19]) FRA, 10 keys to effectively communicating human rights, 2018; European Network of National Human Rights Institutions, Tips for Effective Messaging about Economic & Social Rights, 2019.

3.1.4. There is no rule of law without democracy and fundamental rights, and vice versa; the three concepts are intrinsically linked ([20]). Hence, the EESC urges all concerned parties to stop talking of so-called illiberal democracy, even when they do so to criticise the concept. There is no democracy without liberal principles. Illiberal democracy is not an alternative or even a diluted form of democracy. Illiberal democracy is no democracy.

3.2. *Necessary policies and relevant policy areas*

3.2.1. As observed by the EESC before, there is a correlation between people's perceived or real lack of benefit from economic prosperity on one hand, and negative attitudes towards public institutions and fundamental principles on the other ([21]).

3.2.2. Making the case for human rights and the rule of law requires steps to identify policies that can improve people's daily lives.

3.2.3. Human rights protection and the rule of law are strengthened by a strong welfare state, regardless of the various forms it may take across Europe. This interconnectedness is recognised by the European Pillar of Social Rights, an essential policy tool for building a more inclusive Union ([22]). Workers must have the right to fair wages that provide a decent standard of living (6th principle of the Pillar), and everyone lacking sufficient resources must have the right to an adequate minimum income to ensure that they can live with dignity at all stages of life, and effective access to enabling goods and services (14th principle) ([23]).

3.2.4. The COVID-19 pandemic is a reminder of the importance of a universal, accessible and fair public healthcare system. The EESC reiterates the position expressed in opinion SOC/691 (2022): 'The EU and its Member States should engage in a deep societal reflection on the origins of the crisis and the reasons why most European health systems were pushed to the verge of collapse because of the pandemic. Years of austerity policies have led to a general trend of disinvestment in the health sector and other key social services (assistance to dependent and vulnerable persons, nursing homes, etc.), creating a time bomb that exploded in the face of a major health challenge.' ([24])

3.2.5. The pandemic is not the only crisis which affects fundamental rights. The war in Ukraine is endangering millions of people in Ukraine and around the world. Climate change and its associated challenges and disasters like wildfires directly affect people across the continent. Many Europeans are struggling with increased energy prices. Europe's tools for action should be updated and adjusted accordingly.

3.2.6. Policies, particularly economic reform policies, should be based on systematic *ex ante* and *ex post* human rights impact assessments ([25]), in order to facilitate informed and inclusive European and national debates on the arbitration and adjustment of political choices ([26]).

([20]) Opinion of the European Economic and Social Committee on 'The European control mechanism on the rule of law and fundamental rights' (own-initiative opinion) (OJ C 34, 2.2.2017 p. 8).

([21]) Opinion of the European Economic and Social Committee on Populism and fundamental rights — suburban and rural areas (own-initiative opinion) (OJ C 97, 24.3.2020, p. 53).

([22]) European Commission, The European Pillar of Social Rights in 20 principles.

([23]) Opinion of the European Economic and Social Committee on 'For a European Framework Directive on a Minimum Income' (own initiative opinion) (OJ C 190, 5.6.2019, p. 1).

([24]) Opinion of the European Economic and Social Committee on 'The impact of COVID-19 on fundamental rights and the rule of law across the EU and the future of democracy' (own-initiative opinion) (OJ C 275, 18.7.2022, p. 11).

([25]) UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Guiding Principles for human rights impact assessments for economic reform policies, UN doc. A/HRC/40/57, 19 December 2018.

([26]) Opinion of the European Economic and Social Committee on Populism and fundamental rights — suburban and rural areas (own initiative opinion) (OJ C 97, 24.3.2020, p. 53).

3.2.7. Greater emphasis should be placed on Chapter III (Equality) and Chapter IV (Solidarity) of the Charter of Fundamental Rights as core elements of the EU's democratic and value-based credentials ([27]). All human rights recognised in the Charter are indivisible, interdependent and equally important. As pointed out by the European Court of Human Rights in a landmark case, there is no watertight division between socioeconomic rights and civil and political rights ([28]).

3.2.8. Further cooperation between EU institutions and Member States would be desirable to ensure all citizens and residents enjoy all the rights recognised in the European Convention on Human Rights, the European Social Charter (in its multiple forms) and the relevant UN human rights conventions. The EESC calls on the Commission and Member States to have due regard to the European Pillar of Social Rights and to the European Social Charter when designing, interpreting and implementing EU Law.

3.2.9. The EESC calls on all Member States to sign and ratify the 1996 European Social Charter (Revised) and accept the collective complaints procedure of the European Committee of Social Rights.

3.2.10. The EESC supports the Commission's initiative to allow for economic corrective measures with regard to Member States that commit serious and persistent violations of the values listed in Article 2 TEU ([29]). 'The Commission needs to allocate appropriate human and financial resources and consistently follow up on signs of potential infringements. In doing so, the Commission must apply strictly objective criteria and investigate infringements in the same way in all Member States' ([30]).

3.3. *A democratic case for human rights and the importance of lived experience*

3.3.1. According to a wide-ranging survey conducted by the Fundamental Rights Agency, nearly nine in ten people in the EU think that human rights are important for creating a fairer society ([31]). Europeans believe that human rights can play a meaningful role in their lives.

3.3.2. Making human rights real across Europe requires action to highlight the way in which human rights — for example social rights such as work, social security, housing, education and healthcare — can make a difference for everyone in their daily lives, in the places that matter most to them and in their local communities ([32]).

3.3.3. Grassroots movements and people with lived experience of poverty must be at the centre of a democratic case for human rights. There is no better way to defend human rights, particularly social rights, than having the voices of the people most affected by inequality, poverty and social exclusion heard in public spaces and policy debates. Telling a human story and showing the human face and the person behind the evidence, as well as statistics, can also help. Taking social rights seriously requires not only different policies, but also more inclusive processes to come up with them ([33]).

3.3.4. European society cannot afford a fraudulent rights-versus-democracy binary choice. Upholding human rights requires making them popular by building and preserving a movement to champion the rights at the local, national and global levels.

([27]) Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Strategy to strengthen the application of the Charter of Fundamental Rights in the EU' (COM(2020) 711 final) (OJ C 341, 24.8.2021, p. 50).

([28]) Airey v Ireland, Judgment, Merits, App No 6289/73 (1979) ECHR Judgment of 9 October 1979, para. 26.

([29]) Opinion of the European Economic and Social Committee on 'The impact of COVID-19 on fundamental rights and the rule of law across the EU and the future of democracy' (own initiative opinion) (OJ C 275, 18.7.2022, p. 11).

([30]) Opinion of the European Economic and Social Committee on Rule of law and the recovery fund (own-initiative opinion) (OJ C 194, 12.5.2022, p. 27).

([31]) FRA, Many Europeans believe human rights can build a fairer society but challenges remain, press release, 24 June 2020.

([32]) Casla, Koldo and Barker, Lyle, Human Rights Local, *Human Rights Centre blog — University of Essex*, 17 January 2022.

([33]) Casla, Koldo, 'Nothing about us, without us, is really for us', *Global Policy*, 14 October 2019.

3.3.5. Civil society groups must lead this process, and public authorities in the EU and in the Member States must facilitate the democratic case for human rights by acting transparently and by respecting the role of civil society in holding them accountable. National human rights institutions should be strengthened, and they should raise awareness of possible remedies available to citizens.

Brussels, 14 December 2022.

The President
of the European Economic and Social Committee
Christa SCHWENG