

Tyranny is Crime

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Electronic copy: http://platonpart.hu/public/publikacio/20180923_Reketyei_Vazsonyi_Tyranny_is_Crime.pdf

23 September 2018

1. Abstract

The Sargentini Report on serious violations of democracy and rule of law in Hungary raises the question whether why the serious violations of the fundamental values of the EU are not yet considered as criminal acts. De lege ferenda, this paper provides a practical definition of tyranny in the context of the EU's six fundamental values and proves that tyranny must be declared as a crime in the EU due to the fact that tyranny is a serious violation of the fundamental values and a serious threat to the European society. EU lawmakers are urged to criminalize tyranny on EU level in criminal code as soon as possible to avoid the proliferation of the Hungarian anti-democratic model.

2. Motivation

The European Parliament (EP) accepted¹ the Sargentini report² on 12 September 2018 with 2/3 majority vote, triggering the Article 7 proceedings of the Treaty on European Union³ against the Hungarian government for undermining democratic values and the rule of law defined as fundamental values of European Union (EU) in Article 2 of the treaty. This was the first time EU lawmakers have initiated Article 7 of the treaty. This process can lead to sanctions and suspension of EU voting rights of Hungary. With this decision the elected representatives of the EP declared that the lack of rule of law and the violation of democracy is dangerous to society in Europe. This decision is a milestone in the history of the EU. However, this decision radicalized the nationalist governments e.g. in Poland and Bulgaria where democracy and rule of law are also questionable. The future of Europe depends on whether we consider the six fundamental values of the EU seriously. This paper investigates the implications of the EP decision from a criminal law perspective and suggests that tyranny must be considered as crime and must be punished to avoid harmful proliferation.

3. Dangers to societies

Since ancient times political thinkers identified dangers to societies. Plato mentioned several in his book, *The Republic*. E.g. “...and yet there might be a danger to the poor State if the wealth of many States were to be gathered into one.” Other dangers to the society are mentioned by Plato in forms of external (e.g. barbarians, other States) and internal (e.g. tyrants) threats. Tyranny is considered as a form of danger to society since the age of ancient city states. Plato argues that tyranny can naturally arise from democracy. [3] Absurdly, de lege lata, there is no known example in criminal law

1 <http://www.europarl.europa.eu/news/en/press-room/20180906IPR12104/rule-of-law-in-hungary-parliament-calls-on-the-eu-to-act>

2 EP Report A8-0250/2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2018-0250+0+DOC+XML+V0//EN>

3 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>

sanctioning tyranny in the EU in spite of the many painful and deadly historical lessons Europe learned about tyrannies. Tyranny remained a danger to society only in theoretical legal science but not in tangible EU criminal code. This is a serious legislation gap worth investigating.

After the 2nd World War, leaders of Europe identified the most serious dangers to the society of the European continent. The fundamental values of the EU are the dual pairs of the fundamental dangers to the European society. The fundamental values of EU are the essential necessities of the safety and well-being of the European society. These are the guaranties which can prevent tyranny perpetrated by a corrupt government. Following the dual logic, it also means that the lack or the serious violation of these fundamental values are the most serious dangers to the society of Europe.

4. Foundations of the EU

Article 2 of the Treaty on European Union declares: “*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*” [4]

The Treaty of Lisbon⁴ and the Charter of Fundamental Rights of the European Union⁵, which have legally binding force, also confirm these fundamental values. Without these foundations the EU would not be the union the founders wanted to forge. All of the six fundamental values are needed to keep the EU the sanctuary of these civilization values. The six core values are considered fundamental because other values can be derived from them (e.g. the value of the human life, freedom of speech, etc.) or have less importance for society.

The role of the six fundamental European values is to protect the European society and assure its survival and prosperity. We can state that violating any of the values enlisted in Article 2 is a danger to society. Seriously violating these six fundamental values is a serious danger to society. The six fundamental core values have paramount and serious importance, hence the serious violation of them logically should be criminalized in the European criminal code for their illegality and their undesired effects to society.

5. What is democracy?

Democracy simply means the rule of the majority. By ruling we mean that the majority of the citizens can set the most important basic rules for the whole society. If we restrict the sense of democracy to a European member state then democracy can be defined with the following minimalist definition:

Definition 1: Democracy: The democracy is an attribute of a state where the people have self-determination right by voting with majority in a referendum about public affairs and are capable of setting limits and constraints for those elected to exercise power.

Theorem 1 (democracy requirement): A member state is democratic if and only if the citizens can change the highest law (constitution) with majority vote referendum.

Proof 1: Assuming the truthfulness of the negation of the theorem we use the reductio ad absurdum method to reach absurdity, hence we prove that the negation of the theorem is false,

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTEXT>

5 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

which implies that the theorem itself is true. If the citizens cannot initiate a referendum to change the highest law (constitution) then the people are unable to set limits for those in power because those in power can barricade themselves with legal rules codified in the highest law (constitution) itself, preventing the citizens from setting limits and constraints for those elected to exercise power, meaning that the democracy does not hold. QeD.

We don't consider a state democratic if there can be elections in minor issues but no referendum can be initiated to change the most important public matter, the highest level law, the constitution. Those states where the citizens cannot change the constitution by a referendum are just window-shopping fake democracies where the rule of the majority cannot be achieved, only pretended.

6. What is rule of law?

The rule of law is a basic value of the human civilization. It aims the implementation of a just society. Simply, rule of law means that there is nobody above the law or above anybody else but the just and equitable law is above everybody. This system is the system of legally defined authority and reason. [2]

Definition 2: rule of law: The rule of law is an attribute of a state where the abuse of any of the branches of powers can be avoided by an independent judicial power branch.

Note: There could be a stricter definition for the rule of law. We would prefer a much more robust rule of law definition by expecting the independence of nine branches of power: government, lawmaking, justice, president, secret service, media, science, prosecution and constitution court. We restrict our definition to two independent branches of power because the EU usually requires only the independence of the justice power branch from the rest. In many case, sadly, the government has direct influence on lawmaking (e.g. in Hungary's state party that resulted in a one-party-system).

Definition 3: Independence of branches of powers: Any arbitrary two branches of power are independent if and only if neither of them can influence the decision making process of the other.

Unfortunately, this definition is still vague, since the definition of influence is missing. Let's restrict our analysis on a practical formulation by stating that by "influencing decision making process" in another power branch is considered possible if the leaders of a power branch are elected by the other power branch. We cannot really exclude all influence by law since malicious people can circumvent the law by informal ways (corruption, blackmailing, bribery, friendship, etc.). We can only minimize the possibility of such influence by letting the citizens elect the leader of that power branch directly instead of letting another power branch do that.

Theorem 2 (rule of law requirement): The rule of law holds if and only if the justice power branch is independent from the other branches of power.

Proof 2: The theorem states that the judicial power branch can be independent only if the leaders of it are not elected by the other power branches. If the leaders of the judicial power branch are elected by the other power branches then the decision making process can be influenced, hence, independence cannot hold, hence, rule of law cannot hold. QeD.

7. Conjunction of fundamental values

Democracy and rule of law are independent fundamental values (state attributes) but in the EU they must co-exist with each other and with the other four fundamental values due to Article 2.

Note: Democracy without rule of law is possible. In such a democracy the citizens can initiate a referendum on the highest law (constitution) but the branches of powers are not independent, so abuse of power can happen. Rule of law without democracy can also exist, where the branches of power are independent, but the citizens cannot initiate a referendum to change the highest law (constitution).

We state that Article 2 establishes an anti-tyrannic system. Democracy and the rule of law are two values which by their nature can be violated only by the lawmakers of a member state. Absurdly, the serious violation of these two values are not penalized yet at all. More absurdly, the violation of these two values can result in the most stable and enduring tyranny since the violation happens by corrupt norms in the highest level law, the constitution. We must conclude that the lack of criminalization might be the interest of a corrupt leadership, otherwise tyranny would be already a serious crime.

8. What is tyranny?

In order to elaborate on the criminal aspects of tyranny, we must understand the definition of tyranny.

Definition 4/a: Tyranny⁶: Tyranny is oppressive power exerted by a government.

This definition seems to be too general since the definition of oppressive power is not given. In order to work with a tangible and practical definition of tyranny, we use the following formulation, considering its European context. In this paper tyranny is used in the sense government tyranny.

Definition 4/b: Tyranny: Tyranny is the serious violation of any of the EU's fundamental values defined in Article 2 of the Treaty on European Union.

We state that by defining the six fundamental values, the primary motivation of the EU was to avoid government tyranny in Europe. To avoid another Hitler on the continent. Hence, in our standpoint tyranny (in the European sense) is the crime of seriously violating the EU's fundamental values.

By serious violation we mean that the violation is so threatening that it endangers the mere existence of its subject. The definition is a disjunction which implies that the serious violation of human dignity or freedom or democracy or equality or the rule of law or the respect for human rights is tyranny on its own.

9. What is crime?

In order to analyze whether tyranny can be considered as a crime we must define crime.

Definition 5: Crime⁷: Crime is an illegal act for which someone can be punished by a member state's government or by the EU.

In other words, a crime is an act (felony or misdemeanor) committed in violation of a law prohibiting it or omitted in violation of a law ordering it. In general, the criminal law must be enacted before the crime is committed. There are many crimes defined already in EU member states, including political crimes. However, one of the most serious political crimes, tyranny, is not criminalized yet. Ruining democracy and the rule of law with malicious white-collar legal machination is still possible in the EU without any punishment. This is absurd in our opinion and must be stopped.

6 <https://www.merriam-webster.com/dictionary/tyranny>

7 <https://www.merriam-webster.com/dictionary/crime>

We intend to show that tyranny is a form of political crime which targets and seriously violates the fundamental and most important values of the EU, hence, it is seriously dangerous to society, consequently tyranny must be considered a serious political crime. Other political crimes, which are already well-defined and already criminalized, are targeting values having less importance than the fundamental EU values. If the political crimes with less important values are criminalized then the more serious act of tyranny must be also criminalized due to the transitivity principle of logic and the *a minori ad maius* principle of criminal law (who is forbidden less is all the more so forbidden the more).

We argue on one hand that the fundamental values of the EU can be considered as legal regulations (law), and that serious violation of the fundamental values is illegal, dangerous to society and must be punished.

The act of tyranny can be perpetrated by a government, which makes the definition of crime tricky to interpret. Crimes are punished by the government by definition. In the special case when the government commits the crime some further explanation is needed. In the EU the criminal court of the EU is at higher level than the courts of the member states.

Based on the terminology of the EU criminal law, very serious crimes are which are regarded as an exceptional threat to member states. We argue that the serious violation of the six fundamental values of the EU are exceptional threats to all member states since all member states are founded on the same six fundamental values. Violating any of these values in one member state weakens the foundations of all the EU members. This negative effect is clearly visible in the current situation of the EU where the governments of Poland and Bulgaria announced that they will veto the Article 7 process against Hungary (since they do not want to be the subject of the same process and support a “dangerous precedent”⁸). The EU can short-circuit such malicious tactics by declaring that serious violations of democracy and the rule of law are considered criminal acts in the EU.

Distinction between violation and serious violation of values must be made. Simply violating the fundamental values of the EU is not enough for criminalization. A biased judicial verdict can violate for example the fundamental value of freedom (the convicted person would be imprisoned longer than justifiable), however the judge who made the verdict is not considered as a criminal if the high court finds his verdict biased. These are glitches in the system which can be corrected. However, serious violation of the same value (freedom) must be criminalized (e.g. abduction) because it makes freedom impossible for the victim.

10. Tyranny as a danger to society in Europe

The basic EU values of democracy and rule of law can be compromised by the lawmakers of a member state with malicious legislation. Long arguments could be assembled about why tyranny is a danger to society. Among the most important aspects are the following.

Theorem 3: Banning citizens from initiating a referendum to change the highest level law (constitution) is a serious violation of democracy.

Proof 3: Based on the democracy requirement, a member state where the citizens cannot initiate a referendum to change the constitution cannot be considered a democratic state. QeD.

8 <https://www.euractiv.com/section/eu-elections-2019/news/bulgarian-government-sides-with-orban-against-article-7/1272414/>

Theorem 4: Electing the leaders of the judicial power branch by another power branch is a serious violation of the rule of law.

Proof 4: Based on the rule of law requirement two power branches are not independent if the leaders of one are elected by the other. It implies that the rule of law does not hold in this case. QeD.

The fact that tyranny is still possible in the EU without legal consequences is outrageous and undermines the credibility of the EU itself from its citizens' point of view. Obviously, there are short-sighted benefits of tyranny for the global economy resulting in oppressed uneducated cheap workforce that lets certain countries be exploited. [8] But the fact that in spite of the clearly stated six fundamental values, tyranny (the serious violation of these values) can still happen unpunished within the EU is unacceptable and a legal nonsense.

11. Acts of tyranny

Speaking of Hungary, one evidence of tyranny is the clear violation of the democracy requirement. It is codified in the Hungarian Base Law (constitution) in section 8 in paragraph (3) a). This rule simply revokes the self-determination right of the citizens by stating that no referendum can be initiated to change the Base Law. Another evidence of tyranny in Hungary is the clear violation of the rule of law requirement in the Base Law, due to the government-elected administrative court, codified in section 1 in paragraph (2) e).

Oppression of the civil society is another evidence of tyranny. The Sargentini Report refers to anti-civil laws implemented by the Hungarian Government and argues: “... *is deeply concerned that the proposed laws could serve as a model within the Union that will undermine the valuable work of civil society organisations fighting for the respect of human rights, a danger that the EU Fundamental Rights Agency has recently underlined.*” The danger to society was clearly stated in the Sargentini report. Though, criminal sanctions are still missing.

12. Criminalization of tyranny

What can be more criminal in the EU than seriously violating the fundamental EU values themselves? Current criminal law sanctions the violation of many other values which are secondary values with less importance compared to the six fundamental values of Europe. If violation of secondary values is criminalized (e.g. display of banned symbols) then serious violation of fundamental values must be also criminalized if we accept the logical rule of transitivity and the requirement of the *a minori ad maius* legal argumentation principle.

However, we can see that not all serious violations of the fundamental values are criminalized yet in the EU. Serious violation of the rule of law and serious violation of democracy is not yet penalized in the EU at all. General prevention is needed to avoid tyranny in the future of the EU. The way towards prevention is criminalization of tyrannic acts with inevitable punishment. Considering the empirical evidences observed in European history (e.g. the tyranny of Adolf Hitler, Nicolae Ceaușescu, etc.) on one hand, and theoretical legal argumentation on the other hand, we must state that tyranny is seriously dangerous to society, since the serious violations of the EU's fundamental values is seriously dangerous to society. As a Hungarian historian noted:

*“There is no such thing tyranny-of-good-purpose or tyranny-of-bad-purpose, there is only tyranny, and it does not become inhuman due to its leaders, but necessarily, due to its own nature.”*⁹

As a logical consequence, de lege ferenda, we strongly propose for the EU criminal legislation bodies to qualify tyranny as a crime in the EU by implementing it in the criminal code above member states.

In order to criminalize a socially harmful behavior, we need a clear definition of the criminal cases which can serve as a legislative norm to penalize a certain act. It is not wise to codify a too narrow or a too broad definition of a criminal case which defines tyranny. We propose the following formalization as a desirable definition for some of the most serious criminal cases:

Case 1: Any person who prevents the citizens of a member state to initiate referendum on changing the highest level law (constitution) commits tyranny and must be punished.

This criminal act (banning citizens to change the constitution by a majority vote referendum) seriously violates the fundamental value: democracy, since this act makes real democracy impossible. The Article 8 paragraph (3) subparagraph a) of the Base Law of Hungary meets the definition of this case since it prevents Hungarian citizens from initiating a referendum to change the Base Law (constitution). [7]

Case 2: Any person who makes the election of the judicial power branch possible for another existing power branch commits tyranny and must be punished.

The Article 1 paragraph (2) subparagraph e) of the Base Law of Hungary meets the definition of this case since it declares that the leaders of all of the power branches are elected by the National Assembly of Hungary. Considering that Hungary is a one-party system, it means that all of the power branches are in the hand of one single party. Due to the so-called party-discipline, it practically means that all power branches are in the hand of one single person, the current prime minister, who have total authority in the state. [7]

The European Union has a unique possibility to handle deviant governments of member states which seriously violate any of the six fundamental EU values. This possibility is to define criminal law on EU level which has effect in all member states. Legally it is possible due to the Treaty of Lisbon Article 69 B, paragraph 1: *“The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.”* [6]

According to our standpoint the tyranny defined above meets the category of corruption and organized crime. Tyranny is an organized crime organized by a government, usually to facilitate corruption.

We consider the above legal possibility as an exceptional and unique possibility for the EU since it can

⁹ The quote was originally said by the Hungarian historian Dr. Szabolcs NAGY on 26 February 2017: https://papa-ma.hu/index.php?op=cikk_reszletes&id=16473

contaminate tyrannic member states. The US, for example, does not have this possibility over those countries where the fundamental values are violated, and hence, the US interests are indirectly violated. [1] The US cannot define criminal law so that it has effect in the underlying countries. But the EU has this possibility over its member states. So it is time to use it while we can to protect society.

13. Summary

Based on our rational evaluation of tyranny we conclude that tyranny is seriously dangerous to society. Due to its serious danger it is highly recommended to criminalize the act of tyranny in the EU. The paper proposed a definition for two criminal cases which can be a baseline for other criminal cases and for further analysis and discussions. If European leaders do not penalize the serious violations and the lack of the fundamental values of the EU these fundamentals remain easy-to-circumvent window-shopping decorations. Our initiative could be a perfect fit for the further development of the Criminal Justice Area of the EU focusing on so-called serious crimes. Core to this thinking is the idea that there are certain interests only the EU can protect effectively for its citizens above its member states. Good governance will thus require the use of an EU criminal justice area in which government tyranny can be a serious crime to be inevitably penalized by the EU. [5]

14. References

- [1] Gene Sharp: From dictatorship to democracy, A Conceptual Framework for Liberation; The Albert Einstein Institution; 2010; ISBN 1-880813-09-2; <https://www.aeinstein.org/wp-content/uploads/2013/09/FDTD.pdf>
- [2] James A Grant: The Ideals of the Rule of Law; Oxford Journal of Legal Studies, Vol. 37, No. 2 (2017), pp. 383–405; doi:10.1093/ojls/gqw025; Published Advance Access October 26, 2016; <https://academic.oup.com/ojls/article-pdf/37/2/383/17644026/gqw025.pdf>
- [3] Plato: Republic; Book IV - Adeimantus - SOCRATES; 360 B.C.; <http://classics.mit.edu/Plato/republic.html>
- [4] Treaty on European Union; 2007; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>
- [5] Dr Marianne L. Wade: Developing a Criminal Justice Area in the European Union; 2014; European Parliament - Directorate General for Internal Policies - Policy Department C: Citizens' Rights and Constitutional Affairs
- [6] Treaty of Lisbon; 2007; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>
- [7] Base Law (constitution) of Hungary, 2018; <https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV>
- [8] Peter R. Mitchell, John Schoeffel: Understanding Power, The Indispensable Chomsky; 2002; ISBN 1-56584-703-2