

Summary

The rule of law is on everyone's lips. Although no one knows exactly what the concept encompasses, everyone seems to be in favor of it. In a nutshell, it entails that no one is above the law. That being said, the rule of law is anything but a univocal concept.

In the common law countries, the rule of law occupies a preeminent position as it has been envisaged to curb the discretionary power of the executive.

In the civil law family, the rule of law has been conceived more broadly with the enunciation of substantive and formal requirements of legality, an approach that is placing less emphasis on judicial process. The rule of law is known in the Council of Europe and in the EU legal order as the *Rechtstaat*, and in the French-speaking world as *l'Etat de droit* which is the literal translation of the German concept.

In a nutshell, the concepts of *Rechtstaat/ l'Etat de droit* aim at confining the actions of the public authorities within a legal framework in order to ward off the risk of arbitrariness on their part. Neither the administration nor the legislature can escape judicial review. In contrast to the common law model, the concepts of *Rechtstaat/ l'Etat de droit* confer a greater importance to fundamental rights. This can no doubt be explained by the enshrinement of fundamental rights in national constitutions in contrast to common law countries (with the United States being the exception).

In Europe, a body of principles (or constituent elements) structuring the rule of law have gradually emerged. The list of these principles varies from one author to another,¹ and from one legal order to another. In the Council of Europe, the European Commission for Democracy through Law (Venice Commission) has identified several sub-principles, which are not subordinate to each other: legality, legal certainty, equality and non-discrimination, separation of powers, etc. These elements are mostly procedural in nature given that it requires the control of the executive powers. Although the precise content of these principles is likely to vary from one State to another, depending on their constitutional traditions, the case law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR) nevertheless makes it possible to identify the substance of several of them. In EU law, the general nature of these constituent elements does not obliterate their binding effect. Given that their scope has been extensively developed in the case law of the CJEU, they are not a source of legal uncertainty.

To sum up, the rule of law is a concept that has been evolving over time rather than a fixed one. The lack of settled definition of this *concept à géométrie variable* is a weakness and a strength. It is a weakness on the account that given the controversies about its status and its substance, international courts (with the exception of the ECtHR and the CJEU) appear to be reluctant to rely upon it. It is also a strength because the rule of law can be adapted to the specificities of various legal branches or specific legal orders such as the EU legal order or international public law.

The speaker will highlight how several principles structuring the rule of law (legality, legal certainty, avoidance of arbitrariness, independence) are relevant in the field of fraud prevention.

¹ The definition given by the EU Regulation 2020/2022 of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020, L 433I, 1) to the rule of law is limited to specifying a number of principles which derive from it and which are relevant to the objective of protecting the Union's financial interests. See Case C-156/21, *Hungary v EP v Council*, C-156/21 [2022] EU:C:2022:97, paras 236-237.