

Ralf Dahrendorf Taskforce on the Future of the European Union

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Future of EU – Human Rights – Fundamental Freedom

What role should the EU have if member states violate
democratic principles?

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1. Dilemma

The European Union is a community of values which include democracy and basic, fundamental rights. What happens, however, when a member state seems to be in violation of these rights? Should the EU try to enforce these values against national governments?

This dilemma is perhaps best approached by starting with the Copenhagen criteria. These criteria, comprised of 3 components, are only enforced by the EU when the countries are applying for membership. After the countries have become members, the EU doesn't seriously punish any countries acting out.

The Copenhagen criteria have a political aspect, in which they require stable institutions, rule of law, human rights, and the respect and protection of minorities; the economic requirements include but are not limited to efficient market economy and a capacity to cope with competitive pressure and market forces within the Union. The third category is the acceptance of the *Acquis Communautaire*, which basically can be boiled down to adherence to the aims of a political, economic and monetary union.

Since the criteria figure largely in the accession process, it is also important to raise the question of what happens to countries, which are already members but lead in an incompatible manner subsequent to their accession. It is a question that emerged increasingly in relation to Hungary in the past 4 years.

2. Some attempts in relation to Hungary

One of the most notable examples to tackle this issue was the Tavares report, written by Rui Tavares in relation to the situation of the fundamental rights in Hungary. It critically analysed issues ranging from the excessive use of cardinal laws, the electoral reform, the checks and balances, the independence of the judiciary to media pluralism. Additionally it alerted the Committee on Civil Liberties, Justice and Home Affairs to the necessity of a mechanism that resolves this dilemma.

Hungary received several recommendations from different sources. The recommendations here could either mean the highlighting of the problems or the voicing of alternatives to the controversial passages of bill proposals or the constitution. The Tavares-report in itself was a big step and a summary of the dangerous tendencies in Hungary. While the Venice Commission voiced their opinions on the several debated passages of different legislature and in some cases these opinions were valued and adopted, while in others they were not.

In some cases, to get a clearer understanding, the European Parliament invited members of the Hungarian government, such as Tibor Navracsics on media law matters, as well as representatives of the Hungarian Civil Liberties Union.

However important this report was, it clearly backfired politically: the government could blame the EU for interfering in domestic affairs. As the report could do little more than condemn – without any specific steps – it was only a symbolic show.

3. What are the potential solutions or the existing alternatives?

Around the time of the Tavares-report, there was a press release by the European Commission saying that while it is important to end this dilemma so to say, however they could only imagine it in a way that would enjoy legitimacy and acceptance from every member, therefore it would be prudent to introduce it with a potential revision of the Treaty of Lisbon. This is of course impossible if one member state is actively opposed.

One potential tool that has been used already is freezing the accounts of Hungary, given that Hungary relies heavily on EU money to carry out infrastructural and other modernising constructions.

Another step that the EU contemplated against Hungary was the use of Article 7. This article can revoke certain privileges from countries if they commit serious breaches against democratic values. The problem with this tool stems from the fact that serious breach is quite vague as far as terminology goes. Additionally, Article 7 can only be used if the countries do not adopt the suggestions the EU hands to the countries in relation to the objected legislature.

Hungary in 2011 adopted the EU recommendations to alter their media law. However a negative example could be the church law. After the Hungarian Constitutional Court had proclaimed the unconstitutionality of the law, the government decided to enact it as a modification of the Fundamental Law. This issue is included in the Tavares-report, as is the media law. As the recent ruling of the European Court of Human Rights violated rights protected by the European Convention on Human Rights and by extension the Fundamental Law is violating them as well, until it is revised, this could come with severe consequences. The most recent critical decision on the way would be an internet tax, which received quite severe criticism so far by Neelie Kroes, the former Digital Commissioner. According to EU sources an internet tax would be one of the first debated issues of the new Commission.

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