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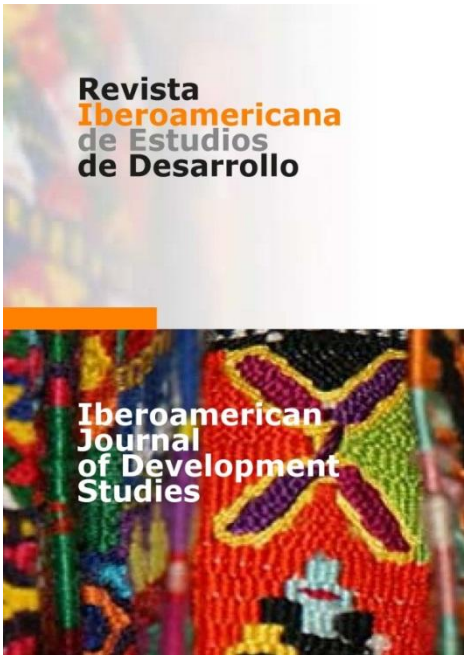

Decisions taken by States with authoritarian governments: economic basis and perspectives on SDG 16

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Decisions taken by States with authoritarian governments: economic basis and perspectives on SDG 16

Decisiones tomadas por Estados con Gobiernos autoritarios: fundamento económico y perspectivas sobre el ODS 16

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Abstract

This article initially analyses the theoretical possibility that the terms «rule of law» and «human rights» in the Treaty on European Union (TEU) can be analysed from the perspective of the Economic Analysis of Law (EAL). It then focuses on the economic principles underlying decision-making to appreciate, under that perspective, the choices made by States, both at the national and international level (which could also include the commitment to the SDGs). From there, the study is oriented more towards SDG 16 proposing, summarily, to denominate with the terms «horizontal» and «vertical» two different basic perceptions on its three main areas (peace, justice, and strong institutions) and tentatively uncovering their possible impacts on the rule of law and the rights and freedoms of specific groups (*e.g.,* LGBTQIA+ community, immigrants, refugees, etc.). It is suggested that, while the «horizontal perception» presents a socially inclusive role, the «vertical perception» tends to be more exclusionary. Seeking congruence with the above, it is also suggested that a biased perception of SDG 16 (associated with the «vertical» vision) could help authoritarian States in the exaltation of their nationalism, without forgetting that international public order, often wielded as an expression of national sovereignty, can serve as a «defensive shield» against alleged «attempts to alter» the fundamental values of the State and of the Christian roots of their societies. Simultaneously, observation of everyday political life seems to suggest that public order can be altered to the liking of populist political parties. The result seems to reveal a growing dichotomy between values (European vs. national), public orders (European, albeit incipient vs. international and domestic), and types of democracy (liberal vs. illiberal). As incidental and illustrative examples, the authoritarian drifts in Hungary and Poland are included in the study.

Keywords: human rights, rule of law, SDG 16, economic principles, European Union.

Resumen

En este artículo se analiza, inicialmente, la posibilidad teórica de que los términos «Estado de derecho» y «derechos humanos», contemplados en el Tratado de la Unión Europea puedan ser analizados bajo la perspectiva del análisis económico del derecho. A continuación, se centra en los principios económicos que subyacen a la toma de decisiones para apreciar, bajo esa perspectiva, las elecciones realizadas por los Estados, tanto a nivel nacional como internacional (lo que podría incluir también el compromiso con relación a los ODS). A partir de ahí, el estudio se orienta más hacia el ODS 16, proponiendo este investigador, sumariamente, denominar con los términos «horizontal» y «vertical» dos diferentes percepciones básicas sobre sus tres áreas principales (paz, justicia e instituciones fuertes) y descorriendo, de forma

tentativa, sobre sus posibles impactos en el ámbito del Estado de derecho y de los derechos y libertades de grupos específicos (*v. g.,* comunidad LGBTQIA+, inmigrantes, refugiados, etc.). Se sugiere que, mientras que, en la «percepción horizontal», se presenta un rol socialmente inclusivo, la «percepción vertical» tiende a ser más excluyente. Buscando su congruencia con lo anterior, se sugiere también que una percepción sesgada del ODS 16 (asociada a la visión «vertical») podría coadyuvar a los Estados autoritarios en la exaltación de su nacionalismo, sin olvidar que el orden público internacional, muchas veces esgrimido como expresión de la soberanía nacional, puede cumplir la función de «escudo defensivo», frente a supuestas «tentativas de alteración» de los valores fundamentales del Estado y de las raíces cristianas de sus sociedades. Simultáneamente, la observación de la cotidianidad política parece sugerir que el orden público puede alterarse al gusto de los partidos políticos populistas. El resultado parece revelar una creciente dicotomía entre valores (europeos vs. nacionales), órdenes públicos (europeo, aunque incipiente vs. internacional y doméstico) y tipos de democracia (liberal vs. antiliberal). Como ejemplos incidentales e ilustrativos, se incluye en el estudio las derivas autoritarias de Hungría y Polonia.

Palabras clave: derechos humanos, Estado de derecho, ODS 16, principios económicos, Unión Europea.

1

Introduction. Rule of law and human rights from an economic perspective

The rule of law, generally understood as a form of organization of the life of a society, in which the authorities governing it are limited by the existence of a legal framework and their decisions subordinated to and regulated by law and oriented towards respect for human rights and fundamental freedoms, is provided for as one of the fundamental values of the European Union (EU), specifically in the Treaty on European Union (TEU) (Preamble, Art. 2, Art. 21.1 and 21.2).

It is a prerequisite for the protection of all other fundamental values (Nowak-Far 2021), such as democracy and fundamental rights, and is essential for the application of EU law, which associates it with effective judicial protection by an independent judicial system. In turn, human rights are included in its preamble, Article 2 (fundamental values), Article 3.5 (EU relations with the rest of the world), Article 6.2 (accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms), and Article 21.1 and 21.2, b) (relating to the general provisions of its external action).

Human rights differ from fundamental rights. The former is universal and inherent to all human beings, and they are usually enshrined in international legal instruments. Their recognition in the national legal system, at the constitutional level, makes them fundamental rights and may vary from country to country. However, the EU has its own Charter of Fundamental Rights, dated December 7, 2000 (adopted in December 2007), which has the same legal value as its treaties (TEU, Art. 6.1), as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms. Both are part of EU law as general principles (Kurban 2021).

Although relevant, this author fears that the terms «rule of law», «human rights», and «fundamental rights» do not, on their own, allow the direct application of the methodology of the Economic Analysis of Law (EAL). In his view, their normative and political contextualization would be necessary (in a similar vein, Dagan & Kreitner 2021). In the different provisions in which these terms are inserted, a clear collective option for social stability, democracy and respect for human dignity can be observed.

The application of the economic principles underlying this type of analysis reveals, on the one hand, that the effects resulting from the above-mentioned provisions

are aimed at establishing conceptual and regulatory homogenization and inter- and supra-State cohesion among the Member States (Piatkowski 2021). However, it also reveals, on the other hand, an exaggerated confidence in the commitment of these States to the achievement of such objectives. In fact, the possibility of applying sanctions to non-compliant countries is out of context, does not exist, or was developed at a later stage.

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The prediction of the effects generated by the regulatory provisions where the terms are included points to what in economics is known as «lack of efficiency». This occurs because EU regulatory instruments do not present rapid and adequate mechanisms to counteract contrary and unilateral behaviours adopted by Member States (traditionally known by the expression «positive EAL approach») and, even if there were, they would be too slow or presumably paralyzed by the policy (known as «normative EAL approach»).

Thus, for example, the real consequences of the deterioration of the rule of law or violations of human or fundamental rights were already foreseeable from the very conception of the TEU, a situation that has not particularly improved with the Treaty of Lisbon. The institutional-level economic costs related to that cover consultation and constructive dialogue, the procedure that could culminate in the application of sanctions (a mechanism developed only in 2014), the transfer of EU funds and aid to enable the «rogue» State to deal with specific situations or to alleviate the adoption of national measures contrary to the provisions of the treaty, and the conditionality provided for in Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of December 16, 2020, on a general conditionality regime for the protection of the Union's budget, applicable as from January 1, 2021, and whose mechanism, of a subsidiary nature —that is to say, any measures adopted within its framework would only be considered when other procedures provided for in EU law do not allow its budget to be

protected more effectively—, would allow the EU to suspend, reduce or restrict access to its funding in proportion to the nature, gravity and extent of the infringements committed.[1] It is interesting to note that economic pressure was also present in the

[1] «The European Rule of Law mechanism establishes an annual dialogue process between the Commission, the Council and the European Parliament together with Member States, national parliaments, civil society and other stakeholders on the rule of law». According to the European Commission, the Rule of Law Report is the basis for this new process (see https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en). One of its key objectives is to foster inter-institutional cooperation, with the contribution of all EU institutions. The Commission's assessment of infringements considers relevant information, such as reports of the European Court of Auditors, findings of relevant international organizations and decisions of the Court of Justice of the European Union (CJEU). Under this mechanism, the Member State concerned is given the opportunity to state its reasons before a decision is taken. In the case of Poland, in October 2021, the Constitutional Tribunal has declared that several articles of the EU treaties are unconstitutional in the country. More than that, the Court has aligned itself to the position of Polish Prime Minister Mateusz Morawiecki of the ultraconservative Law and Justice (Prawo i Sprawiedliwość, PiS) formation and has stated that Polish law takes precedence over European law and that its national courts are not obliged to abide by the rulings of the CJEU. The ruling places Poland on the brink of legal rupture with the EU, by colliding head-on with the basic principle of the primacy of EU law over the national law of its Member States. At the end of the procedure laid down in the regulation, the Commission would propose the measures to protect the EU budget, while the Council would subsequently adopt them by qualified majority. In this area, consideration should also be given to the existence of an annual report by the European Commission on the rule of law (this report examines vulnerabilities in the rule of law). The Rule of Law Report and the preparatory work with the Member States take place annually in the context of the mechanism and serve as a basis for discussions in the EU, as well as to prevent problems from arising or existing ones from becoming more acute. Identifying challenges as early as possible and with the mutual support of the Commission, other Member States and stakeholders, including the Council of Europe and the Venice Commission (advisory body to the Council of Europe that provides legal advice on constitutional issues that promote full respect for fundamental rights among its Member States), could help Member States find solutions to safeguard and protect the rule of law. The first annual report was one of the main initiatives of the Commission's 2020 Work Program and has pointed to the deterioration of judicial independence and information pluralism in Poland and Hungary. In these countries, the extraordinary powers assumed by the executive branch to deal with the pandemic have raised concerns in the EU. In Hungary, for example, the state of emergency had no time limit and some criminal provisions adopted to punish alleged misinformation might not be adequate. In Poland, in turn, the forced transfer of judges has been carried out to prevent them from adjudicating certain cases (in violation of the principles of the irremovability of judges, who cannot be removed from their cases without justified legal grounds, and of judicial independence and neutrality), and attempts have

even been made to hold presidential elections without a real campaign. Poland and Hungary are among the few EU countries whose plans for recovery from the economic crisis generated by the pandemic have not been approved by the European Commission (as of the date of submission of this paper), which requires, to release resources, specific milestones involving both respect for the rule of law and reforms of the judicial system. The conditionality mechanism ensures that European funds are not transferred to countries that do not respect the rule of law (such as Poland and Hungary). Although both countries accepted it on December 10, 2020, they appealed to the CJEU in March 2021 for a ruling on its validity and applicability. Until the (possibly confirmatory) judicial pronouncement, the European Commission has chosen to respect the pact of non-application of the mechanism that the governments of these two countries reached with the other European leaders. The European Parliament, however, accused the European Commission of inaction and started to put pressure on it (including a lawsuit before the CJEU on October 29, 2021). In turn, the European Commission, apart from initiating proceedings to require the Polish Government to abolish the Disciplinary Chamber of its Supreme Court, approved at the end of 2019, as it did not provide the necessary guarantees to protect its members from political control, was also demanding the CJEU to apply sanctions for the Polish Government's failure to abide by the interim measures imposed on it on July 14, 2021, for the same reason. In fact, one day after the CJEU's pronouncement (*i.e.,* on July 15), the Polish Constitutional Tribunal decreed the incompatibility of the imposition of this type of precautionary measures with the country's Constitution. In view of the failure to comply with the judgment, the Commission has sent a formal letter to the Polish Government urging it to comply with the judgment and giving it two months to reply to the letter (after which a negative reply would allow it to ask the CJEU to impose sanctions). Another infringement procedure opened against Poland concerns its central government's efforts to have more than a hundred municipalities declare their territories, services, and workplaces «LGBTQIA+ ideology-free zones» (considering the rights of this group to be a social threat). Based on Article 2 of the TEU, the Commission sent a letter to a group of regional authorities in the country (as the managers responsible for the funds), urging them to change their position and to respect the fundamental rights of this group under threat of suspension of payments under the REACT-EU programs (recovery aid for cohesion and the territories of Europe).

The conditionality mechanism, according to the Polish and Hungarian governments, is one of «political evaluation», which they do not admit. In their application to the CJEU, they have also criticized both the vagueness of the definition of what would constitute a «violation of the rule of law» and the «legal uncertainty» that this violation would entail. Another criticism (increasingly common on the part of both governments, especially the Polish one) would be the probable overreach of the European institutions in their functions (including the lack of provision in the framework treaties of competences that they consider belonging to the State). The mechanism, approved in December 2020, requires a qualified majority for funds to be denied or reduced. Contrary to the procedure of Article 7 TEU (commonly known as «nuclear button»), the conditionality mechanism does not identify the infringements eventually committed by the Member State (moreover, the violation of the rule of law, by itself, is not sufficient to deflagrate the mechanism, since its activation would occur insofar as it affects the execution of the EU budget). The idea of greater agility of

decision of the Court of Justice of the European Union (CJEU) in its decision of October 27, 2021 (imposition of a fine of one million euros per day on Poland —to be paid in favour of the European Commission— for violating the independence of its judiciary). In this case, the reason was Poland's failure to halt the activities carried out by the disciplinary chamber of its Supreme Court, which could have caused «serious and irreparable damage» to the independence of judges (the CJEU had already requested, as a precautionary measure, in July 2021, the provisional suspension of this body, until a final ruling on the case). The disciplinary body had the power to sanction judges who, for example, applied the primacy of European law or referred questions to the CJEU for preliminary rulings. In practice, it functioned as a system of political control of the content of judicial decisions, which could cause irreparable damage to the legal system and the values on which the EU is based (particularly the rule of law), as well as to the rights conferred on individuals.

Following the line of the liberal economic currents coming from the Chicago School, it should be noted that, under the perspective of allocative efficiency (especially Pareto efficiency), the provisions of the TEU would reach their optimal function (Pareto optimum) if a change in their wording could improve the situation of all Member States without harming any of them (Biró & Gudmundsson 2021). In turn, according to the Kaldor-Hicks efficiency, this would increase when the participants who reached a better situation assign an adequate compensation to those who worsened their previous situation, in order to prevent everyone from ending up worse off than before (Medema 2021). This would correspond to the granting, by Member States, of benefits of different orders to worse-off States (NextGeneration).

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reaction would be useful for the EU. In fact, one of the major difficulties for the application of the Article 7 procedure is the requirement of a 4/5 majority of its members to establish the existence of a «clear risk of a serious violation» by a Member State of the fundamental values of the EU, on the one hand, and unanimity of the Council for the application of the sanction of withdrawal of a State's voting rights in the European Council (provided that it is established that the violation of these values constitutes a «serious and persistent» reality and not just a mere «risk»), on the other hand. Prior to the application of a possible sanction, the State party may present its arguments (and «recommendations» could be addressed to it). It would also periodically check whether the reasons that led to the finding of a violation of fundamental values are still valid. The Council may decide, by qualified majority, to suspend certain rights deriving from the application of the EU Treaties to the State Party. On the other hand, it may also decide to amend or revoke the sanctioning measures, if they are adopted by qualified majority.

The allocation of rights is the most common in terms of economic efficiency. Optimization is always sought, which, at the EU level, is arguably associated with the Welfare State. Economically, efficiency is achieved by using as few resources as possible. Pareto efficiency and Kaldor-Hicks efficiency tend to be the most commonly used. Both seek to promote the most efficient redistribution possible. The initial allocation of rights has an impact on their subsequent distribution. If all Member States were initially endowed with «X» number of resources/rights and not «X-10», they could have the propensity to acquire them without excessive transaction costs. However, as redistribution depends on normative taxation, transactions are necessary and often hard.

The Paretian criterion does not allow change if it implies a worse position for at least one party. However, the Kaldor-Hicks criterion allows change even if it leads to situational worsening for, at least, one of the participants, as long as the total gains outweigh the total losses and the possibility of reallocating resources from some (the most favoured) to others (the least favoured) is considered. This could be illustrated, at the EU level, with the energy transaction or the enshrinement of the rule of law.[2]

In the unlikely event that the three terms («rule of law», «human rights», and «fundamental rights») are excluded from the EU's normative instruments or that they are redrafted soon, it would be necessary to ask whether, in the first case, their inclusion would have benefited some countries and disadvantaged others and, in the second case, whether the benefiting States can compensate the disadvantaged States. The answer to both situations would depend, in the first instance, on the analysis of transaction costs developed in accordance with the Coase theorem, according to which costless bargaining over the allocation of resources would express the efficiency of a transaction, leading to the absence of the need for normative production for this purpose (Markovits 2021).

However, transactional costs have always existed in the different stages of shaping and development of the EU or conception and elaboration of its original or derived law, since these can be, according to the most recent vision of the field, not only of an economic nature, but also of a political or social nature. The tug-of-war whose result is the various EU legal instruments is part of politics, which is characterized by a «give and take» throughout the process. Moreover, the eventual lack of normative

[2] Although not exactly the case, a rough idea could be provided, at the European level, with the benefits that the EU provides to the six Balkan countries —Albania, Bosnia-Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia— in their transaction to join the EU.

production during these negotiations would be explained by the fact that the parties are not private individuals subject to civil liability rules, but sovereign States responsible for their own rules of coexistence and internal and external orientation.

It is impossible to make a proper assessment and quantify monetarily whether the demand for respect for the rule of law, human rights and fundamental rights has caused economic damage to some States. One can imagine that it has, given the fact that most communist countries, including those in Europe at the time of the Iron Curtain, employed to a greater or lesser degree the forced labour of political and ideological dissidents in several of their public constructions. It could also have generated prejudice to certain politically connected groups that benefited from an authoritarian situation in certain countries prior to accession to the EU and its set of norms, principles, and values.

As these data are not usually official anywhere and their research is risky and difficult to carry out, we would start from the premise that the presence of the three terms in the TEU would benefit all States equally, by improving the living conditions of their respective populations. Thus, neither would some States benefit to the detriment of others (Pareto), nor would it be possible to compensate a state for the damage caused by its obligation to respect the rule of law, human rights, and fundamental rights (Kaldor-Hicks).

In this area, externalities, typical of economic analysis and represented by the presence of a decision-making variable of an agent that negatively affects the others, would only occur in a unidirectional sense, that is, of a «rebel» State (such as Hungary or Poland), in relation to the other members of the EU, since, in the opposite direction, decisions follow specific procedures that are duly regulated (Djajić & Stanivuković 2021). Although externalities may be positive or negative, unilateral decisions taken by Member States usually have a negative impact on the EU, as they generate instabilities.

The application of game theory, widely known in the field of international relations, having been reduced fundamentally in problems of asymmetry of information and incentives in the field (highly regarded, for example, in the field of EAL) thanks to the development of the Myerson-Satterthwaite theorem[3] (Schwartz & Sepe 2021),

[3] In general terms, it could be mentioned that, according to Roger Myerson and Mark Satterthwaite, efficiency is not possible if the parties to a transaction conceal their honest assessments of the object of the negotiation (there should be no pressure for one party to take losses to the detriment of the other). In direct negotiation, each party assumes the duty to inform the others of its own valuation of

points out that, in the face of the real difference of the States involved, the initial allocation, prior to the transaction, should be made. This means that Member States should make special concessions to countries before their adhesion to the EU (since, from then on, their inequality could remain partially masked by the legislative procedure and the adoption of common values, principles, and rules), or before each regulatory change (which would undermine the principle of equality between Member States). In both cases, this would correspond to an application of «legal and institutional varnish» on a structure that is deficient or even ill-suited to cope with the assumption of certain tasks. For this researcher, this has been a basic problem in Central and Eastern European countries that have failed to meet social demands by following common policies, such as migration. Of course, it is not feasible to grant a moratorium for certain States to respect human rights, to democratize or to present a reliable rule of law since, technically, these elements are prerequisites for EU membership.[4]

Considering that the EAL is not, naturally, the law itself, but a way of interpreting its norms and trying to make predictions about its consequences by means of a specific methodology, it seems to me unfair the idea put forward in certain academic circles according to which human and fundamental rights can be harmed,

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the subject matter of the transaction and all, duly informed, decide whether the transaction should be carried out; for example, «A» (represented by all the Member States respecting the fundamental principles and values of the EU) has an expectation of gain corresponding to the «expected payment» to be made by the other party (*e.g.,* the implementation of credible structural reforms, the scrupulous observance of the fundamental values of the EU, the compliance with the decisions handed down by the CJEU, etc.). From this gain is subtracted the estimated loss for extending to the party the object of the transaction (*e.g.,* financing, or investments). For «B» (the negotiating State Party), the expected gain corresponds to obtaining the object of the transaction (*e.g.,* financing, or investments) minus the payment that «A» expects (*e.g.,* credible structural reforms, scrupulous observance of the fundamental values of the EU, compliance with the decisions handed down by the CJEU, etc.). The fundamental requirements for such a transaction would be: *a)* the estimation of obtaining a gain (if nothing is expected, there would be no initial incentive to participate in the transaction); *b)* the existence of a minimum equilibrium between the parties; *c)* the compatibility between the incentives, and *d)* the efficiency of the transaction (the performance of the benefit should be valued according to who best values or needs it). This is what the conditionality mechanism does by considering the States in terms of respect for the rule of law.

[4] As was made clear at the European Summit in Brdo (Slovenia), on October 6, 2021. The accession offers for Albania, Bosnia-Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia to join the EU necessarily goes through that, as France and the Netherlands usually insist.

because both in the public and private sphere they are not legally negotiable. In other words, they are excluded from the transactions proper to this field and, moreover, they cannot be reached by any interpretation that undermines them.

2

The economics of decision-making: 1. disjunctions; 2. opportunity cost; 3. decision rationality and marginal changes; 4. incentives

Both in the successive enlargements of the European space and in the acceptance of the Sustainable Development Goals (SDGs) by the States, the application of certain basic principles of economics is possible. Their context is often realized in what is popularly known as «cost-benefit». This economic notion consists of a development of four principles of the so-called economic subfield of decision-making: (1) disjunctions, (2) opportunity cost, (3) decisional rationality and marginal changes, and (4) incentives (Samuelson *et al.* 2021).

States are constantly faced with choices, such as whether, or not, to join the EU. The decision for one of the options, however, corresponds initially to what is known in economics as «opportunity cost analysis». In this case, the decision could involve both the renunciation of remaining outside the norms, principles, and values of that group of countries and the refusal to cede certain areas of its sovereign competence to its institutions. That could also happen at a time after accession: is it worth keeping the State as a member of the EU (Brexit and, perhaps, a future Polexit)?[5]

In the field of disjunctions, there is an important difference between decisions taken by individuals or by States. While, in the first case, they generally lead to an automatic renunciation (*e.g.,* to buy or not to buy), in the second case, it is usual to enter a grey zone where an attempt is made, to a greater or lesser degree, to accommodate multiple desires, needs and objectives in a non-exclusive formula (*e.g.,* abortion would be admissible under «X» conditions).

[5] In addition to the authoritarian drift undertaken by the PiS party, Poland's Constitutional Tribunal, aligning itself with the motion carried out by that party, ruled, in October 2021, that Polish law has primacy over European law and that the country's courts are not bound by the decisions of the CJEU, generating a possible legal disconnection of the country in relation to the EU.

In recent years, especially since the assumption of international commitments with the Paris Agreement and the SDGs, both in 2015, the dilemma tends to intensify between protecting the environment and increasing income levels (*e.g.,* the Białowieża forest in Poland) or the social inclusion of all individuals (Dalampira & Nastis 2020), and increasing public spending (the latter, of course, is neither politically correct nor legal). These dichotomies reach the political arena, which is often presented in a dichotomous way: preserving the environment versus industrial growth, and protecting all groups (LGBTQIA+ community, or Muslim immigrants) versus protecting the «national population».

One of the most important social trade-offs is between «efficiency» and «equity». The former refers to whether society can extract the maximum benefit from its resources (which are scarce, by definition). Figuratively speaking, if economic resources are a pie, efficiency would correspond to the size of each slice. Equity, on the other hand, means that the same society manages to distribute these benefits fairly among its members, *i.e.,* how it will share the pie among its different individuals (Barr 2020). When equity is promoted, efficiency decreases, so that, if the idea is to share the pie equally, it would be reducing the reward to the work of some individuals (*e.g.,* native workers) and benefiting others (*e.g.,* immigrants and refugees, or even lazy and «lazy» nationals). In countries with right-wing populist governments, the discourse focuses on the tiny portion that would be due to everyone, because of the excess demand for a reduced supply.

The same is true of the SDGs. Whether due to diplomatic pressure, political tensions, social demands or the personal preferences of their leaders, an overwhelming majority of States have chosen to accept their goals and targets. They considered that it would be better to accept them than not to accept them and thus become part of the group of countries that consider the 2030 Agenda (Kim 2016).

The second economic principle, already mentioned, corresponds to the opportunity cost, *i.e.,* the costs and benefits between the options represented by the trade-offs, or, more simply, what the State gives up obtaining something (Spiller 2011). If a country adopts a unilateral position, it may find it difficult to harmonize with a different collective position, or it may even be rejected by other countries or by international public opinion, as in the case of the Israeli attack on the Palestinians.

The commitment to abide by the EU's fundamental rules, principles, and values (including the decisions of its courts, such as the CJEU or the European Court of

Human Rights) implies not taking divergent measures. Even within the Eurozone, the State would have to give up its sovereign power to maintain or circulate its own currency or devalue its value.

The influence of political, economic, and social factors is enormous in the process of the State's evaluation of existing options; for example, if the Polish or Hungarian Government did not have the support of at least a significant part of their populations,[6] they would hardly depreciate so openly fundamental EU values such as democracy, the rule of law or the human rights of certain groups. The same would be true of the SDGs, since the central idea of the States, at least officially, is to protect and improve the living conditions of their populations (Fonseca *et al.* 2020).[7]

The decision-making rationality of the State (as a collective entity) and marginal changes constitute the third principle. The State is supposed to act (or not to act) after careful reflection on the facts, trends and multiple national and international actors present at a specific time (Gwartney *et al.* 2021). As a result of this thoughtful reflection, the State would seek to maximize its benefits and achieve the greatest possible satisfaction of its interests. To this end, it usually takes decisions and makes small adjustments to an already established political plan (known in economics as «marginal changes»). Depending on the political, economic, and social situation, the marginal gain must exceed the marginal cost. If there is no gain, the State does not make the decision and, if there is a gain, it had better be much higher than the cost, if possible.

Following this line of argument, if a government considers that its international public order is worth defending against the (still incipient) European public order and considering the precariousness and/or complexity of application of the EU sanctioning mechanism, it is likely to hold its ground. Obviously, most decisions are not a simple choice between black and white, as there are many shades of grey. This is the most common circumstance in the life of society and the State.

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[6] Although eventually obtained thanks to subterfuge or hate speeches and fear of some political parties towards immigrants and refugees or contempt for LGBTQIA+ communities.

[7] Of course, there is always the possibility that the situation can be twisted. Thus, for example, regarding Poland, there are various European criticisms concerning the territorial exclusion —in more than one hundred municipalities— of what they call «LGBTQIA+ ideology» («LGBTQIA+ ideology-free zones», as they call them in the country).

If the Polish Government opts for the social exclusion of the LGBTQIA+ community (which is already happening) and decides to exalt the idea of traditional Catholic marriage (Demczuk 2021), the benefit of having, for example, the support of the Constitutional Tribunal and the more conservative wings of political parties and society would perhaps generate political gains for the Law and Justice Party, which in principle will remain in government until 2025.

However, if one were to add the deportations of Muslims, the «hot returns» of Iraqi refugees and the political control over the courts (repeated criticism of the European Commission), the marginal benefit, although apparently greater, would be less, because the more intense deterioration of the rule of law and the systematic violation of human rights would generate greater reactions from its EU partners, including Germany. In addition, the penalties eventually applied could be in the millions to the Polish treasury, not to mention the lack of access to EU structural funds.[8] According to economics, actions make economic sense if their marginal benefit is greater than their marginal cost.

This same economic principle would apply to the SDGs. Although these commitments are political, not legal (Bain *et al.* 2019), their development is embodied in national and international legal norms. If at a given historical moment the commitment to social inclusion *(e.g.)* was a priority, marginal changes should point in that direction, not the other way around.

The last principle applied to decision making is that of incentives. An incentive is something that induces the State to act. It can be a reward or a punishment (not necessarily a legal or economic sanction); for example, if the criminalization of abortion for fetal malformation generates greater social rejection than the support of the Church and the more conservative wings of the party, perhaps the Government will reverse its decision or repeal the norm, or perhaps it will seek to achieve another objective that has a better chance of success. The same would happen if, on the contrary, this criminalization had social support, since the Government could try to take advantage of it to also criminalize homosexual relations or to prohibit equal marriage or marriage between foreigners and nationals. Supposedly, the more compulsory laws it produces, the more benefit and political gain the Government will have, but this is not always the

[8] According to the European Commission, 60 % of public investment in Poland is covered by EU structural funds (more than EUR 150 billion between 2007 and 2020, to which must be added the disbursement of an additional EUR 70 billion planned until 2027).

case, since it would also increase the risk of popular discontent due to the excess of coercive rules, interpreted as restrictive of freedom.

Policy makers do not always consider how their measures affect incentives (Mankiw 2020). This often leads to undesirable outcomes. When, for example, regulations did not talk about equal marriages, people tended to relate more discreetly, away from public view. The benefit of privacy and security outweighed the cost of publicly hiding their relationship. The approval in many countries of equal marriage (or recognition as a domestic partnership) has generated a different behaviour in many homosexual couples: they began to expose themselves more publicly and less carefully, increasing the number of confrontations and aggressions suffered. Although the net number of people assaulted has decreased, the number of family conflicts related to this issue has increased, as these couples are now exposed to a higher probability of reactions contrary to their sexual choice.

This same rationing can be extended to many areas of public life. The advantages of EU membership and of taking advantage of the existence of a single internal market and common tariffs to reduce external competition are incentives for membership. If a Member State constantly needs European funds to cope with its problems, chronic or otherwise, these incentives should presumably lead to a logical behaviour of its rulers: support the EU and proclaim that the country needs «more Europe» (and not, «less Europe»), unless they can benefit from popular support without the risk of institutional sanctions.[9]

In the field of national politics, the question of incentives is present in every decision (Busygina & Filippov 2020): to support or reject this or that measure or law proposal, to move closer to or distance oneself from party «X» or «Y», to harden or nuance positions on this or that issue, to bet on the inclusion of immigrants or limit their participation in the public space, to adopt policies and measures to stimulate their greater integration into the labour market, etc. Something similar happens in the field of international politics: to approach or distance oneself from Russia or China; to support or not the accession of the Balkan countries to the EU; to share or not the values and principles of the EU; to seek or not new trade partners in other parts of the planet; to accept or reject in parliamentary seat the Principle of Agreement signed in 2019

[9] This has long been the case for political reasons (*e.g.,* lack of political will to apply sanctions against the governments of Central and Eastern European countries), the EU's commitment to constructive dialogue and the inadequacy of sanction mechanisms, etcetera.

between the EU and Mercosur; to adopt a more or less critical stance in relation to refugees, homosexuals, Muslims, etc. These movements of rapprochement or distancing, at different levels, reveal, at bottom, the existence of incentives or disincentives. The State (or, for example, the EU) will do so if it has incentives to do so; otherwise, it will not do so or will procrastinate its decision.

Taken together, the above principles are at the core of the cost-benefit assessment. Diligent weighing of political, economic, and social factors will lead to every governmental decision, action, or omission, including its acceptance of the 2015 SDGs.

3

SDG 16 and its main areas (peace, justice, and strong institutions). Tentative proposal of perspectives

Having provided the above information, this research focuses on SDG 16 «Promote just, peaceful and inclusive societies»). This goal concisely reveals three interconnected areas: «peace, justice and strong institutions». This researcher suggests two distinct terms to group two different perspectives related to the pursuit of peace and justice: «horizontal» and «vertical». The former could be associated with democratic countries (*e.g.,* those in Western Europe), while the latter with countries with authoritarian drifts (*e.g.,* Poland and Hungary).

In this research, the terms «horizontal» and «horizontality», coined by the author, refer fundamentally to the conception that peace and justice are on the same hierarchical level as sound institutions. In other words, the promotion of peace and justice would only be feasible if, simultaneously, the strengthening and consolidation of democratic, independent, and impartial national governance institutions were achieved. Thus, it could be said that peace, justice, and strong institutions would go hand in hand, so that the weakness or weakening of these institutions would concomitantly lead to the weakening of the political and legal process aimed at achieving peace and justice.

On the other hand, the terms «vertical» and «verticality» would essentially correspond to the conception that strong institutions, but not democratic, independent, and impartial —since their strength would derive directly from an authoritarian political power with the capacity to interfere— constitute a necessary precondition for peace and

justice —according to the parameters or nuances established by the political power from which they derive (autocracies, and illiberal regimes)— to be viable.

If in the first case the achievement of peace and justice would only be feasible with the simultaneous strengthening of State institutions, in the second case this «strengthening» derived from an authoritarian and dominant political force would be prior (so that its strengthening and consolidation would become an extension arm of political power that, according to its own parameters, would open the possibility of pursuing the objectives of promoting peace and justice). It should be borne in mind that strong or solid institutions do not necessarily correspond to authoritarian institutions. Peace and justice cannot be conceived without the existence of strong institutions, but in the latter case these institutions would be contaminated by democratic scarcity and reduced independence and neutrality.

These two conceptions would have different repercussions on the rule of law and fundamental rights and freedoms. While horizontality, being based on democracy and respect for the rule of law and human rights, would lead to social integration, verticality would lead to the exclusion of certain uncomfortable or undesirable individuals (Muslim immigrants, refugees, LGBTQIA+ community, political leftists, etc.). In broad strokes, these conceptions could suggest a confrontation between values (European vs. national), types of public order (European vs. international and national) and democracies (liberal vs. illiberal). At stake would be the pluralism of society, non-discrimination, tolerance, justice, solidarity and equality between women and men (TEU, Art. 2, Second Part).

The rule of law is a necessary requirement for the protection of both fundamental values and the rights and duties enshrined in international law and in the EU's own treaties (or those of the EU with third countries or groups of countries) and can promote both the European public order and the international public order of its Member States, depending on the emphasis given to it.

While not excluding or minimizing the importance of international cooperation, SDG 16, by including among its main areas the existence of solid institutions, emphasizes the national dimension of the rule of law, since the institutions of national governance consider, primarily, the existence of the rule of law according to the constitutional principles of the country, and within the territorial circumscription of the State itself.

However, the emphasis on the national dimension could also end up favouring the international public order of the forum, since this concept, usually associated with national sovereignty, often tends to be used as a kind of «defensive shield» of the moral, social, and legal order of the forum against «external interference». At the European level, this argument could even be used against the «undesirable attempts to make national rules and values more flexible» by the still emerging European public order.[10]

[10] In the field of private international law, public policy is found, among other instruments, in the Inter-American Convention on General Standards of Private International Law (Arts. 5 to 8), the Bustamante Code (Arts. 4 and 5), and in many other conventions. It is important to note that constitutional precepts are considered international public policy, *i.e.,* they contain a set of principles of public or private law considered fundamental for the organization and functioning of the State. States whose governments restrict individual freedom often reform their constitutional rules and produce many mandatory rules of infra-constitutional rank (which would affect, above all, the national public order). At the EU level, the rule of law is the prerequisite for the protection of all its fundamental values, as well as for protecting the rights and duties enshrined in international law and in the EU's own treaties or in the EU's treaties with third countries or groups of countries. However, the rule of law can promote both the European public order and the international public order of its Member States, depending on the emphasis given to it. Conservative governments can rely on international public order through constitutional reforms to prioritize what they consider to be the fundamental and inalienable values and principles of their States, in line with the collective interests and very existence of their societies. The international public order is presented as a defensive shield of the moral, social, and legal order of the forum against «external interference» and «undesirable attempts at flexibilization» by the European public order (which, contradictorily, does not even recognize its existence, but its risks do). However, it is one thing to exclude, based on the State's international public policy, the application of foreign law, and quite another to try to prevent the application of EU law in its Member States. International public policy may exclude the normal application of the competent foreign law, because of its manifest incompatibility with those (value-laden) principles that are considered fundamental in the legal system of the forum and whose negative impact (externality) would be generated in each society, even if the regulation by the competent foreign law is fair for the parties involved in the case. Traditionally, if the applicable foreign law is contrary to the public policy of the country where it is intended to be applied, it must be replaced by the law of the forum *(Lex fori).* But can this be rationing reach EU law in relation to its Member States? Of course, EU law should not be confused with the law of a foreign country. On the contrary, EU law must apply equally in all EU Member States. It is up to the CJEU to ensure this. The fundamental principles and values of the EU are supposed to be common and shared by the EU Member States. However, countries with authoritarian governments such as Hungary and Poland have adopted governmental measures and policies that do not respect EU values, principles, and regulations. Under the argument of defending the Christian roots of society and/or the traditional

Catholic model of marriage and family (for example), divergences have increased in recent years since the ultraconservative parties Fidesz and PiS, respectively, came to power. Although the EU condemns the nationalist positions of these countries, they have not been able to «stop them in their tracks». In fact, their attacks are usually directed towards European values, EU legislation and, of course, those collectives (or individuals in particular) considered undesirable according to the Government's position. Technically, public order is invoked to counteract negative disturbances in the forum, but it is neither clear nor proven that EU values and norms undermine the basic and inalienable principles and values of the legal systems of these countries, even if their political leaders say so in their pronouncements. At the national level, the «debate» on the fundamental values and principles of these societies has become politicized and legal opinions have become risible. Noise, confusion, and bias have been generated. It is not surprising, in this sense, that greater political control is sought over the prosecution, the judiciary and the media in these countries. As for the competent foreign law, by its very nature, the public order exception should be considered restrictively and only to prevent its application from generating pernicious inconsistencies in the central axes of the legal system of the forum, which would cause serious harm to society. Several problems can be observed in authoritarian States. Just to mention two of them: (1) members of the judiciary fear political persecution and assess the assumptions of the particular international case in a more biased way, and (2) the international public order of these countries is often very aggressive, compared to that of democratic States (it is not the purpose of this paper to address or elaborate on illiberal democracies), and tends to significantly reduce the freedom of the parties through the regulation by mandatory rules of their private-legal relations (especially in the field of matrimonial and parentage law). Therefore, foreign law is applied much less in these countries, due to the higher incidence of collisions with their public order. Although the idea of safeguarding the principle of justice often appears in the background of public order, justice in these countries is interpreted in a biased way, which counterproductively generates various injustices for those who represent a real or imagined danger to the Christian roots and the traditional model of marriage and family that political parties claim to defend (this often includes homosexuals, Muslim immigrants or Muslim asylum seekers, left-wing sympathizers or politicians —including any political opponents—, human rights defenders, independent journalists or critics of the system, etcetera).

International public order is composed of principles (political, religious, economic, moral, and legal, both public and private), that are considered basic (or fundamental), necessary for the preservation of social order and the protection of the cohesion, stability, and proper functioning of the essential legal architecture of a specific society at a specific time or historical period. They reflect the general interests of society and embody its most cherished, essential, and inalienable values at a specific time. For this reason, the idea of timelessness invoked by the ruling political parties in Hungary and Poland is not congruent with the understanding on the legal level. The international public order invoked by the States is, in fact, national. Each State organizes the coexistence of its society according to its own rules (the State has its own set of basic principles) and presents its own international public order. As the content of the international public order is diffuse, it is up to the judicial authorities (not the political ones) to analyze whether the solution reached by the foreign rule

is manifestly contrary to the essential principles enshrined in the legal system of the forum; something that, moreover, may change over time. If it affects the structural elements of the legal system of the forum (those that are responsible for the organization of the company), then the application of the foreign rule must be excluded. The application of public policy is exceptional (*i.e.,* the application of the competent foreign rule is the rule) and must therefore be interpreted and applied restrictively. Indeed, it should only operate if, in the specific case, the foreign law designated as applicable by the national conflict rule violates the basic legal structure of the country whose courts hear the case and disturbs the legal cohesion, proper functioning and stability of the respective society. When invoking the public policy exception, the judicial authority must assess the different circumstances of each case based on two crucial stages: the analysis and calibration of the principles contained in the national legal system according to the degree of sensitivity and social consensus on them, and the weighing of whether the principles involved in the case are effectively violated by the application of the foreign law. This delicate activity of the judiciary is subject to pressure from the political powers in several countries, allegedly with greater intensity in those with authoritarian governments. The more the interpretation of the norm is subordinated to political power, the greater the risk of bias and collision with public order. Authoritarian countries that tend to exalt the fundamental principles of their legal systems through constitutional reforms and high-level judicial decisions end up extending the application of public order. The argument that they are immutable, timeless, unrenounceable, etc., principles and values of the State and its societies also tends to emphasize the risk of their deterioration due to internal and external disintegrating factors. Among the internal factors would be, for example, communists, homosexuals, progressive journalists, etc., and, among the external factors, Muslim immigrants, non-Caucasian asylum seekers, «liberal» organizations promoting political and ideological pluralism, etc., and, in the normative framework, even foreign law, EU legislation and values. The idea of guilt («due to» or «because of») is symptomatic and is part of the current policy of generating social polarization. Expressions such as «we seek the union of all against common enemies», the «enemies of our freedom», of «our way of life», of «our values and principles», of «our Christian roots», of «our model of family and marriage», etc., are increasingly part of the discourse of the current right-wing populism that can be observed today in several countries with authoritarian tendencies.

Essentially, the access of the foreign element (whether individuals, organizations, or norms) should be «controlled» for the benefit of the State and its society. The idea is to prevent the national society from being «contaminated» by principles, values, norms, and certain individuals (national or, mainly, foreign). The nationalist-populist discourse takes place in a hyper-connected environment (in the case of the EU, for example, Central and Eastern European States receive a large part of its funds). The profuse editing of peremptory norms (especially in countries with authoritarian governments such as Poland and Hungary) can distance them from the rule of law. Recent constitutional, criminal and prison policy reforms in these countries (and in others, including Denmark, with its new Refugee Act) tend to lead to the consolidation of this problem. Considering that public order, generically considered, would legitimize the exercise of the police activity of the State, whose purpose is to preserve and promote social tranquility, peace and security, health, imperative laws, public morals

Legal protection against foreign rules, principles or factors that affect the moral, social, and legal order of the country is not always very evident, as it can remain blurred in concepts that are difficult to define, such as, for example, national morality. In authoritarian countries, the tendency for politics to interfere in the law and in the organs of the administration of justice is real. Countries such as Poland or Hungary, led by ultraconservative parties, advocate the defence of «genuinely national» values (Inotai 2021) and debate the role of the EU, which they consider undemocratic and with a centralizing tendency.

The exaltation of international public order as an expression of national sovereignty plays a role of defence of the moral, social, and legal order of the country, of the fundamental and inalienable values and principles of its States, in line with the collective interests and existence of their societies. In this perspective, it would be understandable that States with a more authoritarian profile would rebel against the

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(predominant in a democratic society), good customs, general interest, etc., any factor deemed potentially debilitating to society would be rejected by the State and its institutions. The nationalist-populist discourse takes place in a hyper-connected environment (in the case of the EU, for example, Central and Eastern European States receive a large part of its funds). The profuse editing of peremptory norms (especially in countries with authoritarian governments such as Poland and Hungary) can distance them from the rule of law.

The internal public order includes all the coercive provisions that cannot be removed by the will of the parties. For contemporary constitutionalist States, internal public order, in its public sphere, thanks to the principle of legality, would seek to prevent administrative discretionality from being transformed into arbitrariness. The problem is more difficult to solve when the rules are discriminatory because they are often supported by the public order itself. In this case, the rule of law would have to be invoked, which would assume a primordial role. In its private sphere, on the one hand, national public order would legitimize the exercise of the fundamental rights and public freedoms recognized in the Constitution and, on the other, would seek to limit the autonomy of will and the exercise of acts contrary to the collective interests of the community. With the authoritarian drift (observed in Hungary and Poland, for example, but extensible to a greater or lesser extent to other countries), the national public order, in its private sphere, is quite questionable, as it can serve as a basis for restricting the exercise of certain rights and freedoms (including those enshrined in European regulations). Governments tend to limit the autonomy of will when it goes against what they consider to be the «collective interests» of their societies. The divergence between the internal and international public order of some EU Member States, on the one hand, and the European public order (not yet established, despite the positive contribution of the European courts), on the other, only highlights the importance that certain countries attach to their own set of national values (even to the detriment of other supposedly shared ones). *Vid.* Alvares Garcia Júnior (2021).

alleged attacks of the European institutions, which could be associated with alleged factors of cultural disintegration and undesirable «interference» in their internal affairs.

Countries with authoritarian drifts such as Hungary, Poland, the Philippines, Turkey, Russia, or China are in an active process of producing binding rules, including constitutional, procedural, penal, and penitentiary reforms that increase the centralization and empowerment of the State, while limiting the basic rights of groups considered undesirable (Weyland 2021).

A few examples will suffice:

(I) Hungary: (1) approved in December 2020 a reform of its constitution that expressly prohibits adoption by gay couples; (2) «hot returns» without examination of possible asylum cases, despite the decision of the CJEU of December 17, 2020, which has even led to the suspension of the Frontex mission in the country in January 2021; (3) detention for up to three years in internment centres of irregular immigrants, usually Syrians or Iraqis arriving from Serbia, even if they were asylum seekers with the intention of going to other EU countries, usually Germany or those of Northern Europe (European regulations only allow it when it is essential for registration purposes or in case they remain irregularly in European territory and there is a regularly issued expulsion order on the person); (4) transparency law («Stop Soros law»), which criminalizes the assistance to irregular immigrants, even to advise them in their asylum application (natural persons: imprisonment of up to one year —except if there is a risk of death; non-governmental organizations, obligation to: *(a)* registration with the jurisdictional authorities of the territorial circumscription, *(b)* declaration of the amount received from abroad -EU Member States or third States—, when it exceeds 1,400 euros, as well as the name of the donors, and *(c)* publicity indicating their status as «organization receiving foreign aid» or, as the case may be, «organization with foreign capital». In both cases, most of them are financed by George Soros' foundations and operate in the migratory and anti-corruption fields, which has generated discrimination towards the entities and individuals they aim to help, such as Transparency International, the Hungarian Union for Civil Liberties or the Helsinki Committee (the only entity that does it for free and that has favourable decisions from the European Court of Human Rights); (5) the attempt to make the Central European University unviable, either by foreign funding (Soros), or by the added obligation for foreign universities (or universities with foreign capital) operating in the country to have a

campus in their country of origin, which does not exist (a law granting the State greater power to control universities, in order to combat the ideas of Viktor Orbán's enemy No. 1, the American tycoon and philanthropist of Hungarian-Jewish origin George Soros on liberal and progressive societies —his Open Society Foundations supports educational and civil society strengthening projects developed, among others, by the Central European University of Budapest—, interpreted as a plan to undermine European Christian culture through the «flooding» of Muslim immigrants);[11] (6) the constitutional reform that prohibits the settlement in the country of the foreign population, except those of European origin, under the argument that the ethnic composition of its population cannot be modified by any «external will» (understand, the EU and its migratory policy, which establishes the distribution in the form of quotas of the asylum seekers among its Member States; Hungary, without taking in any refugees, has appealed to the European courts against the quota system agreed by a majority in the EU and against the relocation measures for the 1,200 refugees —0.02 % of its population— coming from Greece, Italy and Germany.[12] In addition, he continues to offer strong resistance to EU migration and refugee policy with his leadership of the «Visegrad Group»[13] or «V4», which also encompasses Slovakia, Poland and the Czech Republic). In fact, Orbán claims in his speeches that migrants and refugees constitute a threat to «Christian civilization». Interestingly, foreigners account for only 1.5 % of the country's population, with almost 70 % of this group being Europeans.

(II) Poland: (1) constitutional reform allowing the sanctioning of judges who publicly criticize the erosion of the independence of the Judiciary in relation to the Executive Branch, which already controls the Supreme Court; (2) fight against «European liberalism»; (3) enormous empowerment of the police, subordinated to the Executive Branch; (4) alarming politicization of the Public Prosecutor's Office (direct

[11] In 2019, the Hungarian Government defended an information campaign against the EU and against the former president of the European Commission for seeking to facilitate immigration and impose the distribution of refugees on Member States.

[12] It has pledged not to be sanctioned until the CJEU rules on the legality of the European distribution of refugees without the participation of the Hungarian Parliament.

[13] On February 15, 1991, Czechoslovak leader Václav Havel met with Polish President Lech Wałęsa and Hungarian Prime Minister József Antall to form a group that, while defending their common goals and interests, would help their countries in the EU accession process. The name of the group refers to a meeting held in 1335 in the fortress of Višegrad, where Charles I of Hungary met with King John of Bohemia and Casimir III of Poland.

control of the Executive Branch); (5) political control of the Constitutional Court by changing its members, in order to unblock laws banning abortion or limiting public space to certain groups considered undesirable and destabilizing for society: LGBT (there are municipalities considered «free of LGBTQIA+ ideology» since 2020), or immigrants (especially non-Christians, Muslims, blacks, etc.); (6) control of the Civil Service of Civil Servants, local administrations (reduction to two terms of office of mayors to eliminate opposition in rich cities such as Kraków, Warsaw or Wrocław); (7) greater control over public media (press, radio, and television); (8) adoption of special taxes on foreign commercial chains; (9) gradual campaign aiming at reducing the female role to that of mother (even with the elimination of the subject of gender equality in textbooks through the 2017 education counter-reform); (10) illegalization of abortion by the Constitutional Court in 2020 in cases of fetal malformation (the legal assumptions are: rape, incest, serious threat to the life or health of the mother, and high probability of serious and irreversible damage to the fetus. Abortion for fetal malformation is illegal, because it is considered a form of eugenics that does not respect the dignity of human life) and, logically, (11) an exorbitant fear of refugees (especially Syrians, «because they are carriers of diseases eradicated in Europe»).[14] Above all, Christianity has been misleading used as an essential factor of social cohesion, as a way of repudiating the «foreign and Muslim enemy that invades us and tries to destroy our Caucasian and Christian civilization».

To make a long story short, in the Philippines, the 2020 anti-terrorism law allows the police and military to arrest and detain suspects without warrants and, in Turkey, the 2017 constitutional reform allows President Recep Erdoğan to issue legislative decrees without the need for subsequent parliamentary approval. Democracy and the public space of civil society are shrinking in many countries, at the same time as police and military empowerment is increasing, legal norms (constitutional, or criminal) are being reformed, and policies and laws that distort pluralism, tolerance, human dignity, equality, and fundamental rights and freedoms are on the rise.

What is happening in these countries seems to go in the opposite direction of the idea of citizen empowerment envisaged in the Millennium Development Goals (MDGs)

[14] They are often associated with rising criminality, increased risk of disease transmission, and the potential destruction of the identity values of society.

of 2000 and even of the other goals of the current SDGs of 2015 (De Jong & Marjanneke 2021).

In authoritarian countries with illiberal drifts, the increase in police power and political influence over institutions seems to harmonize with the political stance of «preservation of Christian values and roots» (in the European case), which are considered fundamental and inalienable in their societies (Morieson 2021).

SDG 16, although it does not legitimize the illiberal drift of the countries mentioned (in fact, the strong institutions are supposed to have a democratic profile), ends up «surrendering» to the authoritarian impact of political influence/presence in the country's institutions, contributing, due to its lack of legal binding force (it is a political commitment that must be developed normatively), to conservative policies that exalt sovereignty and public order.

Perhaps, the idea of horizontality that has been suggested in this paper on the three areas included in SDG 16 could help the State to more effectively combat several of its «internal» disintegrating forces, such as poverty, various injustices and iniquities, violence and widespread criminality, etc., as well as to reach —although apparently less effectively than with the idea of verticality— «foreign» disintegrating forces, such as undocumented migrants, refugees, terrorists, cybercriminals, or organized criminals (the latter two because of their international connections).

Under this perspective, while the idea of horizontality could corroborate with the drive towards greater social cohesion (the inclusiveness of all domestic or foreign individuals, because of its democratic basis and respect for human rights and the rule of law), the proposed idea of verticality would do so through a process of condensation in which the public space of specific domestic (*e.g.,* LGBTQIA+ community, supporters of the political left, Muslims, etc.) and foreigners (*e.g.,* immigrants and refugees, especially), both of which are considered detrimental to society and the nation-State (Toshkov & Kortenska 2015).

When it is inserted into a warmongering political discourse that a specific society can only aspire to be more just and prosperous with greater empowerment of public institutions and greater State control over certain potentially harmful and destabilizing groups, it seeks to legitimize the exercise of a police power, whose ultimate goal would supposedly be social stability achieved through the preservation and promotion of the «general interest», wielded as a bulwark of morality, good morals, health, peace and citizen security. The use of military terminology in the discourses

leads to the search for public enemies: immigrants, homosexuals, refugees, Muslims, the media (not aligned with the political ideology), «rebel» judges, etc., including all those who help or support them (Aytaç *et al.* 2021).

The MDGs focused on the rule of law as an international mechanism to prevent war and its social consequences. Their goals and targets sought to protect human beings against State repression by strengthening human rights, democracy, and good governance. This «international» rule of law was based on the decisions of the International Court of Justice to enhance peace, security, disarmament, human rights, sustainable development, and international law (Zeng 2021). The aim is to achieve societies free from fear and violence, with inclusive access to justice and effective and accountable institutions.

To this end, States should strengthen and protect themselves against their forces of disintegration (Lucarelli 2021), through a gradual process of «securitization» of the rule of law and empowerment of their forces of law and order and security, legitimizing coercion that can and tends to undermine it. Without excluding the above objectives or minimizing their risks, the SDGs, relying on the resolutions and decisions of the Security Council and the General Assembly (*e.g.,* A/RES.48/132, A/RES/49/194, A/RES/50/179, A/RES/51/96, A/RES/52/125, A/RES/53/142, A/RES/55/99, and A/RES/55/221), as well as on the reports of the UN Secretary General (*e.g.,* S/2004/616), began to take up the issue of the rule of law (S/2004/616), started to attribute to the rule of law a perhaps more «national» connotation, aiming at more just, peaceful and inclusive societies, free from fear and violence, with inclusive access to justice and effective and accountable institutions (Novitz & Pieraccini 2020).

A brief historical overview may be of interest at this point. For several years now, the UN has been promoting the idea that security is a necessary condition for the expansion of human rights, sustainable development, and the rule of law itself. Its historical antecedent was the 1993 World Conference on Human Rights, which included security and criminal justice within the scope of the rule of law. This idea was repeatedly reproduced by the General Assembly, reinforced by the so-called «Brahimi Report» of 2000 (Van Elsuwege & Gremmelprez 2020) and, subsequently, by the Report of the Secretary-General to the Security Council in 2005, when the terms «security» and «development» were associated, and the notion of «collective security» was exalted. The rule of law would assume the role of social cohesion and peace

builder, as guarantor of the effectiveness of law and justice and against misery, fear, and human indignity.

With the 2005 World Summit, the strengthening of the rule of law became the central and permanent focus of the reports of both the General Assembly and the Secretary General, both presenting it as the only reasonable framework for the advancement of security and, in turn, as the necessary precondition for the development of human rights. To this end, judicial, police and prison reforms would be supported.

In turn, with the 2012 High-Level Declaration, the right to development was strongly added and, from there, the rule of law was definitively enshrined as a basic element of public order and the authority of the State in its fight against its disintegrating forces. It advocates the strengthening of the national police and judicial and penitentiary institutions to maintain peace and order, an idea that the Development Agenda repeats in the post-2015 period, with the notion of well-being.

The UN Security Council frequently alludes to the «rule of law vacuum» (Blair 2021), «citizen security», «social order» and even «development», to urge the strengthening of State security forces, whose law enforcement can be dysfunctional, illegitimate, and incapable of controlling crime, violence, and social disorder. It may even undermine the very notion of the rule of law.

The reinforcement of the State's repressive capacity to maintain the «normality of its rule of law» puts rights and freedoms at risk and can lead to social and, perhaps, ideological control (Hamid & Wouters 2021). The risk exists and, in fact, is already being verified in several parts of the world, as the State has the power and the tools to impose its will. In the name of a more just and inclusive society, injustices can be committed, and rights and freedoms restricted.

The CJEU's condemnation of Hungary in 2017 has focused on both violations of the EU Charter of Fundamental Rights (respect for private and family life, freedom of association, and protection of personal data) and restrictions on the free movement of capital by the «Stop Soros» transparency law (discrimination of treatment between national and cross-border movements, without any objective difference). In turn, the December 2020 decision has done so on the basis of the inhumane treatment conferred on asylum seekers (detained between 2015 and 2018 in the transit/return zones —closed since May 2020— for several weeks or months, often in conditions of isolation and with insufficient and inadequate food, violating the assumptions provided for in European regulations), the failure to ensure effective access to international protection

for people who tried to access the country from Serbia, and the absence of protection for children and vulnerable people.

Neither constructive dialogue and political pressure nor the preventive and sanctioning mechanisms provided for in the TEU have so far succeeded in preventing the occurrence of episodes contrary to the common and fundamental values referred to in Article 21 TEU (Progin-Theuerkauf 2021).

Despite the initiative of the European Parliament —with the rejection of Spain (PP), Germany (CDU) and Italy (Forza Italia)—, the opening by the European Commission of a procedure against Hungary (for the serious deterioration of democracy, the rule of law and rights and freedoms) and the activation of Article 7, Part 1, TEU by the European Council (a mechanism for monitoring and preserving the rule of law, created in 2014, which is based on the risk/existence of a serious and persistent violation of the common values of the EU constituting a systemic threat to its Member States), the maximum sanction of withdrawal of voting rights is almost impossible to apply in practice, because of the prerequisite of unanimity (Hungary and Poland tend to help each other).

In the case of Poland, the first country subject to the European mechanism, the consultation, evaluation and dialogue with the EU regarding violations of the rule of law (first phase), the recommendations to correct the infringements detected (second phase), and the application of sanctions such as the withdrawal of voting rights (third phase) present some added difficulties since, apart from having the support of Hungary (as seen at the European Council Summit in October 2021), it is the sixth largest economy in the EU (until recently) and the first recipient of European funds (pressure via the conditionality mechanism). Moreover, it cannot be forgotten that, for quite some time, it has been the main ally in Central and Eastern Europe of the EU.

In addition to the legal and political difficulty, one could also add the appeasement policy of the «Von der Leyen Commission», which has decided not to adopt sanctions against both countries until the pronouncement of the CJEU on the appeal they filed on the legality of the regulation containing the conditionality mechanism of the rule of law.[15] This position has been strongly criticized by the

[15] The Polish Government accuses the EU institutions of overstepping their powers, usurping rights of national parliaments without the consent of the States expressed in the framework treaties.

European Parliament, which finally decided to sue the European Commission on October 29, 2021, before the CJEU for its inaction.

Since fundamental rights are normatively enshrined in the constitution and it can be modified by Parliament (even with the backing of the Constitutional Court, where judges are usually appointed to fill their posts with political party sympathies or who are more docile for fear of political persecution or disciplinary sanctions, although often illegitimate), nothing prevents the public space of certain individuals or collectives from being reduced in practice. Similarly, one could consider the political «accommodation» of the rule of law and of national and international public order as forms of manifestation of State sovereignty. Thus, it is not unusual for authoritarian governments to seek legal reforms (*e.g.,* criminal, procedural, administrative, and even constitutional) that, in practice, can be potentially dangerous to the rights and freedoms of individuals.

In both Poland and Hungary, the main political parties dominating the government (both conservative) defend the idea that the «traditional Christian family» (consisting of a woman and a man in a monogamous and heterosexual relationship), as the fundamental nucleus of society, is in danger due to its exposure to various factors considered harmful. This seems to run counter to the ideas of social pluralism, non-discrimination, tolerance, justice, solidarity, and equality (TEU, Art. 2). The EU legal system requires uniformity, legal certainty, and cooperation of the Member States, but Poland, seconded by Hungary, claims that this idea of Europeanism undermines their sovereignties.

The «empowerment» of the State, the politicization of its institutions and the profuse issuance of mandatory laws by countries with authoritarian (and even «slightly» autocratic drifts such as Hungary, Poland, the Philippines, Russia, Turkey, Brazil, etc.) can lead to a deviation from the rule of law, even if their purpose is to pursue and achieve «collective and national objectives».

The invocation of sovereignty arguments and the intransigence of their «fundamental values» lead to the defence of what some States with nationalist governments consider an undue interference in their internal affairs. In States with authoritarian governments, it is not uncommon for regulatory reforms to be carried out that seem to lead to the consolidation of a «police» profile, politically monitored by the Executive Branch. Nor would it be unthinkable that illiberal governments could try to seek greater social legitimacy by holding elections —not always transparent— to consolidate their hold on power (Zoll & Wortham 2021) and create «solid» (but not

necessarily democratic) institutions to suit their needs, to help them pursue legal and ethically questionable ends.

In the case of Western European countries, it is reasonable to expect them to try to combat their destabilizing forces within the legality and democratic normality of a liberal rule of law, with a public order essentially protective of the fundamental rights and freedoms enshrined in the constitution and recognized by international law (Del Vecchio 2021). However, when, instead of horizontality (the idea proposed in this paper), a structure marked by the idea of verticality (idem) is established, the rule of law seems to break down and public order seems to assume a more leading role.

Broadly speaking, for this researcher, the difference in the two proposed ways of understanding SDG 16 (horizontality and verticality) could lead to a growing dichotomy between countries. In the case of Europe, on the west side, a European public order, protective, aggregating, and inclusive and, on the east side, an international public order, directive, disintegrating and excluding in relation to EU values and law,[16] wielded for the purpose of defending its concept of society: the national vision on the national society, not the EU vision on a supposed European society sharing the same values.

The difference in the conceptions, interpretations, and applications of the norms in these two environments already seems to be generating important political and social reflections. If in the first case all individuals are considered elements to be protected, regardless of their origin, religion, race, etc., in the second case there could be an attempt to reduce —and, in fact, this is already happening— the protection of certain individuals considered to be disintegrating elements of society that the State assumes the responsibility of protecting: homosexuals, Muslims, immigrants, refugees, people with different political ideologies, etcetera.

Politicians such as Jair Bolsonaro (Brazil, independent candidate negotiating to join the Patriot Party for the 2022 elections); Rodrigo Duterte (Philippines, Philippine Democratic Party – People Power); Viktor Orbán (Hungary, Fidesz – Hungarian Civic Union); Marine Le Pen (France, National Alliance); Tomio Okamura (Czech Republic, Freedom and Direct Democracy); Geert Wilders (Netherlands, Party for Freedom); Andrzej Duda, Jarosław Kaczyński, and Mateusz Morawiecki (Poland, Law and

[16] The Constitutional Tribunal of Poland has already affirmed (October 2021) the primacy of the national legal rule over the European legal rule.

Justice); Santiago Abascal (Spain, Vox); Matteo Salvini (Italy, Northern League); Jörg Meuthen (Germany, Alternative for Germany), or Norbert Hofer (Austria, Freedom Party of Austria) usually defend the Christian roots of their societies and criticize certain groups as pernicious to these bases.

States with authoritarian governments are perhaps prone to single out as «undesirable» collectives such as Muslims, homosexuals, leftist politicians, journalists critical of the government, human rights defenders, poor people, immigrants, refugees, etc. For example, Fidesz (the ultraconservative Hungarian party) considers Muslims, who constitute only 0.05 % of its population, as the enemy of authentic national and Christian values. Moreover, not so long ago, both Hungary and Poland went so far as to boast about the approval of budget items and the fund for economic recovery (Recovery Plan for Europe: NextGenerationEU, approved by the European Council of June 21, 2020), without the need to make them conditional on respect for the rule of law and European values. In fact, they even openly criticized them, while deviating from the democratic path and violating the human rights and fundamental freedoms of various collectives, shielded by the supposed sovereign defence of their values and roots (Blauberger & Van Hüllen 2021). This situation has subsequently changed, since the transfer of funds to both was not released, precisely because of the situation of the rule of law in them.

In addition to international public order, which technically can become a true bulwark for the defence of national sovereignty, domestic public order is also being configured to guide certain behaviours and punish (or punish more severely) others, without preventing administrative discretionality from turning into arbitrariness and even discrimination in the service of certain political ideologies or the restriction of rights and freedoms now considered contrary to the «collective interests» of their societies. Based on a specific perception of SDG 16, it would not be unreasonable to pretend to achieve peace and justice tailored to political objectives —which do not coincide with the universality intended in the conception of the SDGs (not even SDG 16)— and even to legitimize a repressive State system, that directly affects the rights and freedoms of various collectives.

The countries most favourable to the integration of different groups seem to be those that tend to invoke more frequently themes related to equality, social inclusion, and citizen empowerment, with emphasis on women. This author associates the democratic basis to his proposal of horizontal perception, since institutions would be

strong according to their social legitimacy and respect for the rule of law, democracy, and human rights.

On the other hand, States with governments that are less favourable to the integration of different groups (for example, with authoritarian governments) tend to present, in the opinion of this author, a distorted perception of equality («some are more equal than others»), so that the social inclusion of certain groups seems to be less powerful and the empowerment of some groups of individuals seems to take place to the detriment of others. These would be associated with the idea of verticality, proposed in this paper since, with this nuance, the strength of the institution is configured to the extent that they respond to political control. In other words, what would be a weakness for the former (lack of neutrality, independence, and impartiality, for example) could eventually be considered a strength for the latter (cohesion, coherence, unity, and attention to the interests of the government —or what it considers to be collective— and not «weakened» by ideologies contrary to its interests). For this reason, this author suggests that, in relation to the perception he calls vertical, peace and justice could end up being subordinated to the «proper functioning» of the institutions. We would be talking about «strong institutions», in the sense that they abide by the ideological and political line drawn by the government.

To promote as a priority —and perhaps selectively— the social inclusion of individuals who share or accept the government's specific vision of society, to the detriment of some human groups (*e.g.,* non-Caucasians or those who profess non-Christian religions or whose marriage or family model departs from the traditional types of their societies, even in violation of Arts. 8 and 12 of the European Convention on Human Rights, which covers all families —Mouzourakis 2021—), is a path that the EU does not seem to desire.

Although this is not its purpose, since it is essentially linked to a democratic basis, this author is of the opinion that SDG 16 could eventually be subject to a biased interpretation that could ultimately help political forces in their claims regarding the preservation of society and its foundations.

Constitutional and infra-constitutional standardization with the aim of exalting «fundamental and inalienable values» for their societies (constitutional modifications facilitate congruence with the international public policy as a sovereign expression) has long met with lukewarm responses from the EU. This is partly explained by the fact that the influential and conservative European People's Party —which has dominated the

EU political scene for two decades, encompassing most of the Christian Democratic parties in the region and from which several presidents of the European Commission have emerged— has been dependent on the votes of the parties of the Eastern countries at different times (Palaver 2021).

Some ultraconservative political proposals could be (Joppke 2021): 1. the centralization of power; 2. the defence and exaltation of national symbols; 3. the promotion of Christian values and roots of society; 4. the illegalization of parties and non-governmental organizations based on their ideological profile; 5. the economic protectionism; 6. the adoption of restrictive measures in relation to abortion; 7. the scepticism towards the EU and its values; 8. the exaltation of ideological nationalism; 9. the defence of sovereignty; 10. the selective expulsion of immigrants; 11. the negative conceptions of immigrants and refugees; 12. the closing of mosques and the adoption of measures to contain Islam; 13. the generalized lowering of taxes; 14. the adoption of policies contrary to gender equality and the LGBTQIA+ collective; etcetera.

The ideas with the highest support are the selective expulsion of illegal immigrants, the closing of mosques, the adoption of measures to contain Islam and the scepticism towards the EU and its values; secondly, the generalized lowering of taxes and the adoption of political and legal measures against the LGBTQIA+ community («and its ideology»); thirdly, policies and measures contrary to «gender ideology»; fourth, measures limiting the practice of abortion; fifth, the centralization of power (this placement is because they are constitutionalist parties and, in some constitutions, political, administrative, and legislative decentralization is enshrined); sixth, the illegalization of political parties and non-governmental organizations based on their ideology; seventh, the defence at all costs of national symbols and economic protectionism and, in eighth place, the promotion of Christian values (although it appears in the background of all of them, it is ranked in last place because: 1. they are usually secular States; 2. with secular parties, and 3. because their political constitutions provide for freedom of religious belief).

Although the idea of social inclusiveness of the SDGs in general encompasses all individuals, beliefs, types of marriages or family models, etc. (Krekó 2021), it is suggested that a distorted vision of SDG 16 (associated with the «vertical» vision proposed in this paper) could help authoritarian governments in their purpose of seeking the consolidation of a legal and social model associated with nationalism, Christian religious roots and their historical, identity and cultural elements. Depending on how

this process is carried out, it would be opposed to European values, with the probable consequences that could arise from this.

4

Conclusions

Based on the main results obtained from this research, the following conclusions can be drawn.

The adoption of national policies that challenge the rule of law impacts on one of the fundamental values of the EU, essential for the protection of human rights and for the enforcement of its rules. It seems essential to this researcher, on the one hand, to continue the constructive dialogue and, on the other, to increase the effectiveness of the pressure and/or sanction mechanisms applicable to States parties that do not respect the rule of law. The rule of law conditionality mechanism is a good step in this direction. The cohesion of the EU (normative, principles, and fundamental values) should not be undermined by the conduct of certain authoritarian governments.

In trying to understand, from a purely rational and perhaps mechanical perspective, the conduct of some governments in relation to the rule of law and human rights, this research initially opted for the specific perspective of the so-called EAL. However, due to their own characteristics, the analysis of these terms is not feasible without their political contextualization. In other words, both terms cannot be analysed separately from politics.

Under this aspect, it can be observed that, in the EU, to achieve greater cohesion in the common historical project, the most perceptible collective political option has been that of enshrining social stability, democracy and human dignity. However, this political commitment has always run the risk of being weakened by the ineffectiveness of the sanctioning mechanisms applicable to the EU Member States that violate or undermine them. At present, the risks are high, due to the behaviour of authoritarian governments such as the Hungarian and Polish ones.

In the search for a plausible explanation through economic mechanics, it seemed sensible to delve into the notion of efficiency, since it functions as a common corollary of both EAL and other analytical fields and subfields in economics. Economic analysis (broader, of course, than EAL) suggests caution in the applied study of the two main

economic parameters in this field: Pareto efficiency and Kaldor-Hicks efficiency, because of their negative impact on the current regulatory framework. The fundamental problem would be the existence of transaction costs, according to the Coase theorem. In the European case, these costs are political in nature (potentially economically and socially passable) and are incurred by both the States and the European institutions, during the different stages of formation, enlargement, and development of the EU, as well as in the processes of drafting its regulations or adopting its policies. Thus, the different stance adopted by some governments regarding the rule of law and human rights could not find a fully satisfactory response based on an increase in the efficiency of the EU.

It would be possible to think that, through prior concessions of benefits (*e.g.,* commercial, economic, or political) at the beginning of a negotiating process of an essentially political nature, the harshness and complexity of the existing transactions would be reduced or eliminated by the ongoing process itself. In the European case, would it have been possible to avoid the current onslaught by the EU against some States parties because of the positions adopted by their governments? Whatever the answer, under the economic perspective, we would have to face the Myerson-Satterthwaite theorem, according to which initial allocations prior to transactions tend to violate equality. In our case, pre-allocations granted by the European institutions to certain States would be operationally, legally, and politically problematic, because they could camouflage and perpetuate existing asymmetries, as well as undermine the principle of equality between Member States. Thus, it could be difficult to favour certain countries in advance to the detriment of others, unless it were eventually agreed among all the States parties that special rights should be assigned to them, based on their situation or condition of vulnerability.

With such results, economic analysis might seem ill-suited to explain the decisions taken by a government, even to move towards or away from an expected collective pattern, such as respect for the common principles and fundamental values of the EU. However, economic rationality could underlie political decisions —carried out by both States and the EU—, if we were to consider the four economic principles relating to the subfield of decision-making: 1. disjunctions; 2. opportunity cost; 3. decisional rationality and marginal changes; and 4. incentives (together popularly referred to as «cost-benefit analysis»). The political choices in which such an economic basis could be plausible can cover a wide and varied set of decisional acts, even

expressed normatively. In this area we would have, for example, the choice to integrate an economic space, the acceptance of the political commitments embodied in the 2030 Agenda and the 2015 SDGs, the adoption of policies more (or less) favourable to «X» or «Y» points, etcetera.

Specifically in relation to SDG 16, where the rule of law and human rights tend to pivot on its three main areas (peace, justice, and strong institutions), the subfield of decision-making could also be considered about the eventual perspectives adopted in relation to this goal. In this paper, the researcher has proposed two different and opposing perspectives, which he called «horizontal» and «vertical».

According to the author of the proposal, the «horizontal» perspective (its name would derive from the assumption that the three fields —peace, justice, and strong institutions— enjoy the same hierarchical level) could be associated with democratic States (*e.g.,* those of Western Europe), respectful of the rule of law and human rights and considering a growing European public order, essentially protective, aggregating, and inclusive. This perspective would tend to favour the social inclusion of all individuals and groups (including minorities).

On the other hand, it has suggested that the «vertical» perspective might tend to be associated more with States with authoritarian governments, less respectful of the rule of law and human rights, and with a more directive, disaggregating and exclusionary international public policy. This perspective would apparently tend to favour some groups more than others. In this case, peace and justice could be subordinated to institutions with little independence and neutrality (*e.g.,* the Polish judiciary).

Although such institutions contaminated by political power may be considered «weak» for the horizontal perspective (more aligned with the SDGs as a whole and their democratic basis), they would not be weak for the second perspective. In fact, nothing prevents, under the governmental perspective, their «strength» from being assessed according to the greater or lesser institutional alignment with the objectives of the dominant political parties, which would seek the identity and cohesion of their positions in the different instances of the State. Contrary positions («strong», according to a democratic perspective) could be considered weak or debilitating for generating discrepancies that could hinder the achievement of their objectives, such as, for example, the official position on abortion or the admission and social integration of Muslim refugees in the country.

The research suggests that the two proposed conceptions or perspectives could have a different impact on the rule of law and on the rights and freedoms of certain groups (immigrants, Muslims, refugees, LGBTQIA+ community, politicians and supporters of left-wing parties, journalists critical of the government, human rights defenders, etc.) which, in the European context, would ultimately reveal the existence of a trend of confrontation between values (European vs. national and populist-nationalist), types of public order (European vs. international and national) and democracies (liberal vs. illiberal). Nothing would prevent governmental choices (in which the underlying basis could be the economic subfield of decision-making) from eventually manifesting themselves in one direction or another.

In this context, international public order, as an expression of national sovereignty, could be invoked and used politically by States with authoritarian governments since, legally, they often play a defensive role for the fundamental values and principles of a particular society. Thus, it would not be surprising, for example, if it were eventually invoked in the legal plan (and supported by institutions aligned with the political positions of the ruling parties) to defend, for example, Christian roots or a certain model of family in a specific society.

Naturally, authoritarian governments, to achieve their objectives, might try to legitimize their political power —and with that perhaps achieve a more solid basis for choosing and deciding on different issues—, by holding general elections (some with questionable results). Elections, especially those with non-manipulated results, could give them the necessary impetus to adopt questionable measures under EU standards; for example, with the necessary support, some autocratic governments could try to «reduce the impact» generated by those factors they consider «disintegrating» or «weakening» the society (be they internal or external). Although, generically, strengthening the State is often socially desirable to combat —for example, criminality—, both its approach and the measures it adopts may be negative in relation to the preservation of the rule of law and the protection of human rights, with special emphasis on those of certain minorities.

Whether or not they are backed by favourable election results, it is common for authoritarian governments to promote: 1. normative reforms, both at the constitutional and infra-constitutional levels (at the infra-constitutional level, reforms tend to occur in areas that allow a greater degree of social control, such as criminal, procedural or penitentiary law); 2. the production of legal norms of an imperative nature; 3. the

repressive capacity of the State (*e.g.,* through an adequate legal basis, or a greater allocation of resources and endowments). Eventually, some authoritarian governments may choose to adopt discourses that foster fear and hatred towards the «enemies of the people» or «of the State», etc. Naturally, these elements can have an impact on the rule of law and the rights and freedoms of certain groups.

5

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