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# The Rule of Law in the European Union

Dr. Pekka Pohjankoski  
LL.M. (Harvard), Esq.  
Faculty of Law, University of Turku



Image: Tingey  
Injury Law Firm,  
Unsplash



# What is the Rule of Law?

Simple legality, that “the rules” are followed?

- Rule by law

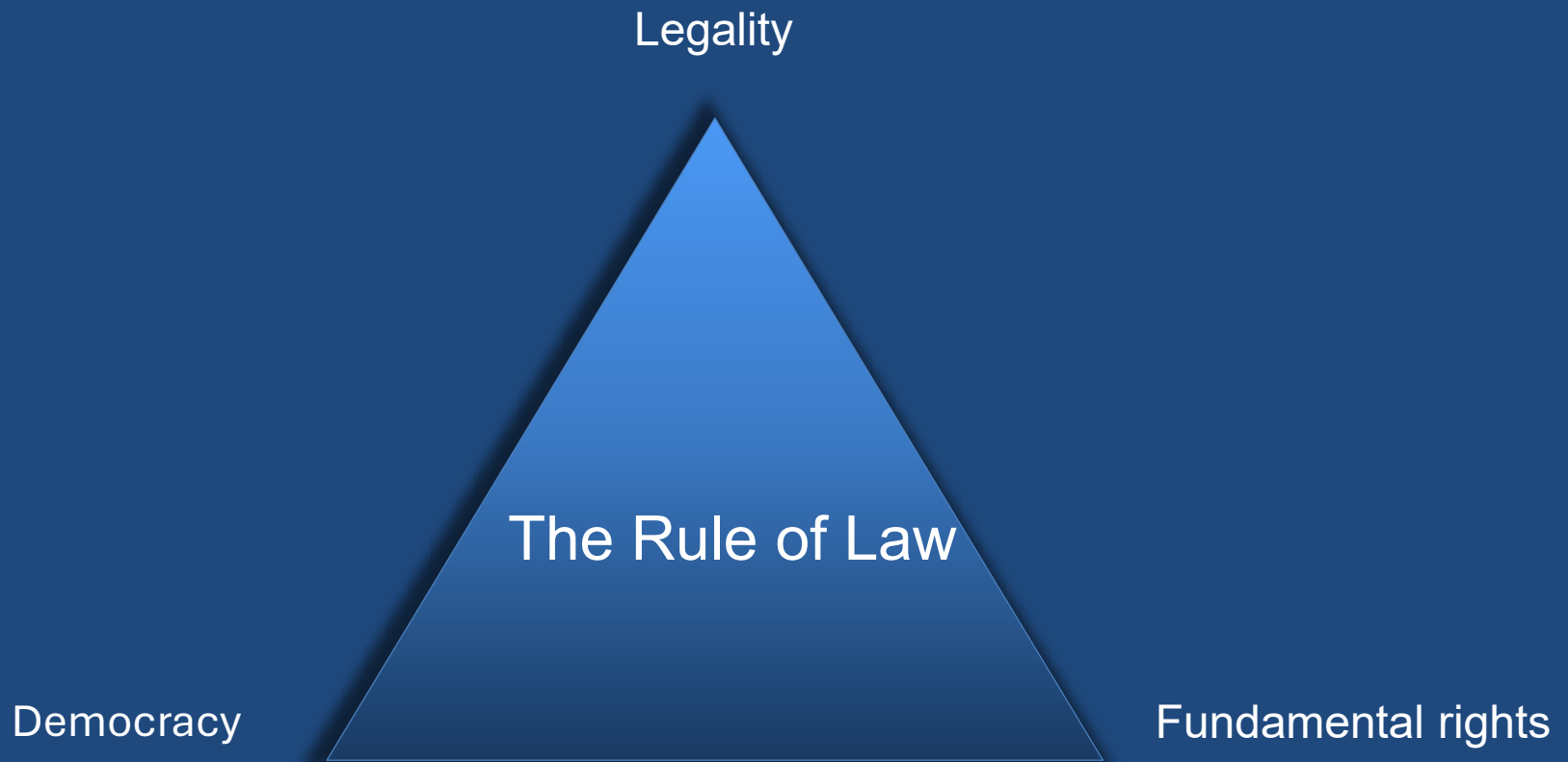
Does it matter how those rules have been enacted?

- Procedural rule of law

Or what the content of those rules is?

- Substantive rule of law

# The rule-of-law triad of constitutional democracy: constitutive elements



# Substantive rule of law in the EU

## *Article 2*

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

# The rule of law defined?

## Conditionality Regulation 2092/2020

### *Article 2*

#### **Definitions**

For the purposes of this Regulation, the following definitions apply:

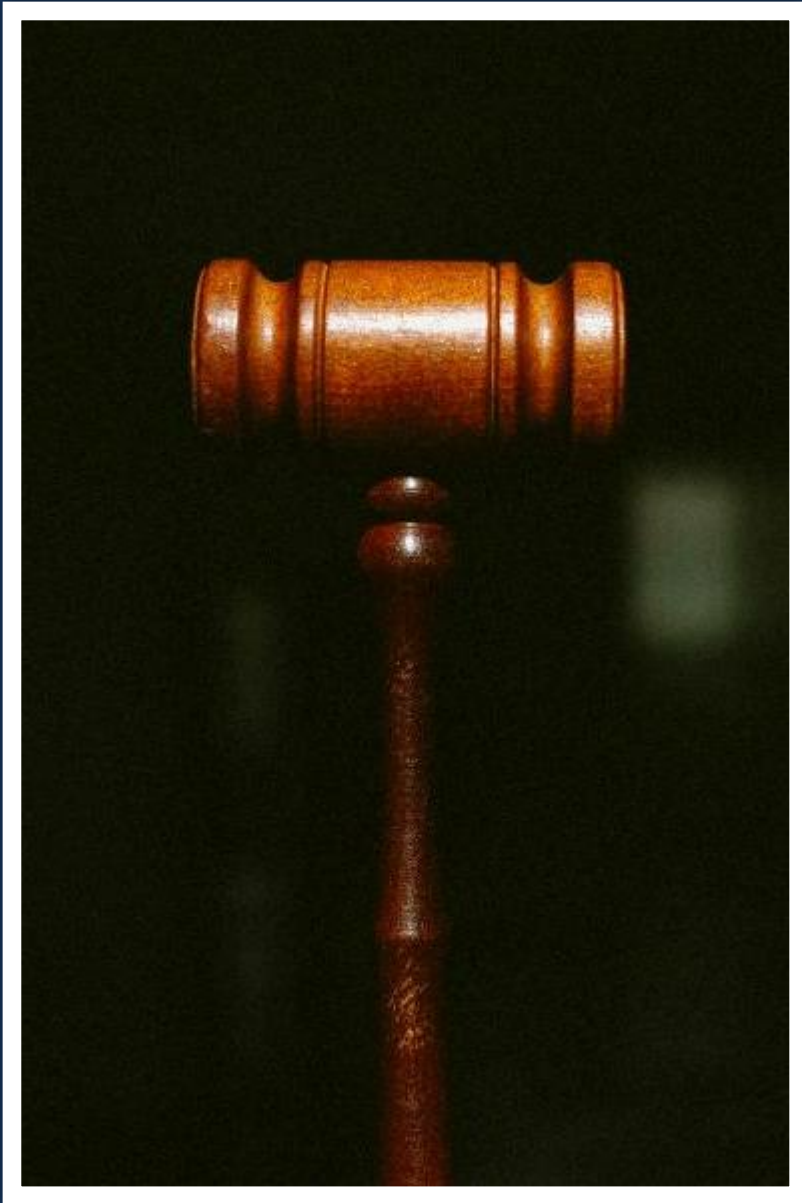
- (a) 'the rule of law' refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU;



Image: Giulia Galante, Unsplash

# Venice Commission: Rule of Law Checklist

1. Legality
2. Legal certainty
3. Prevention of abuse (misuse) of powers
4. Equality before the law and non-discrimination
5. Access to justice

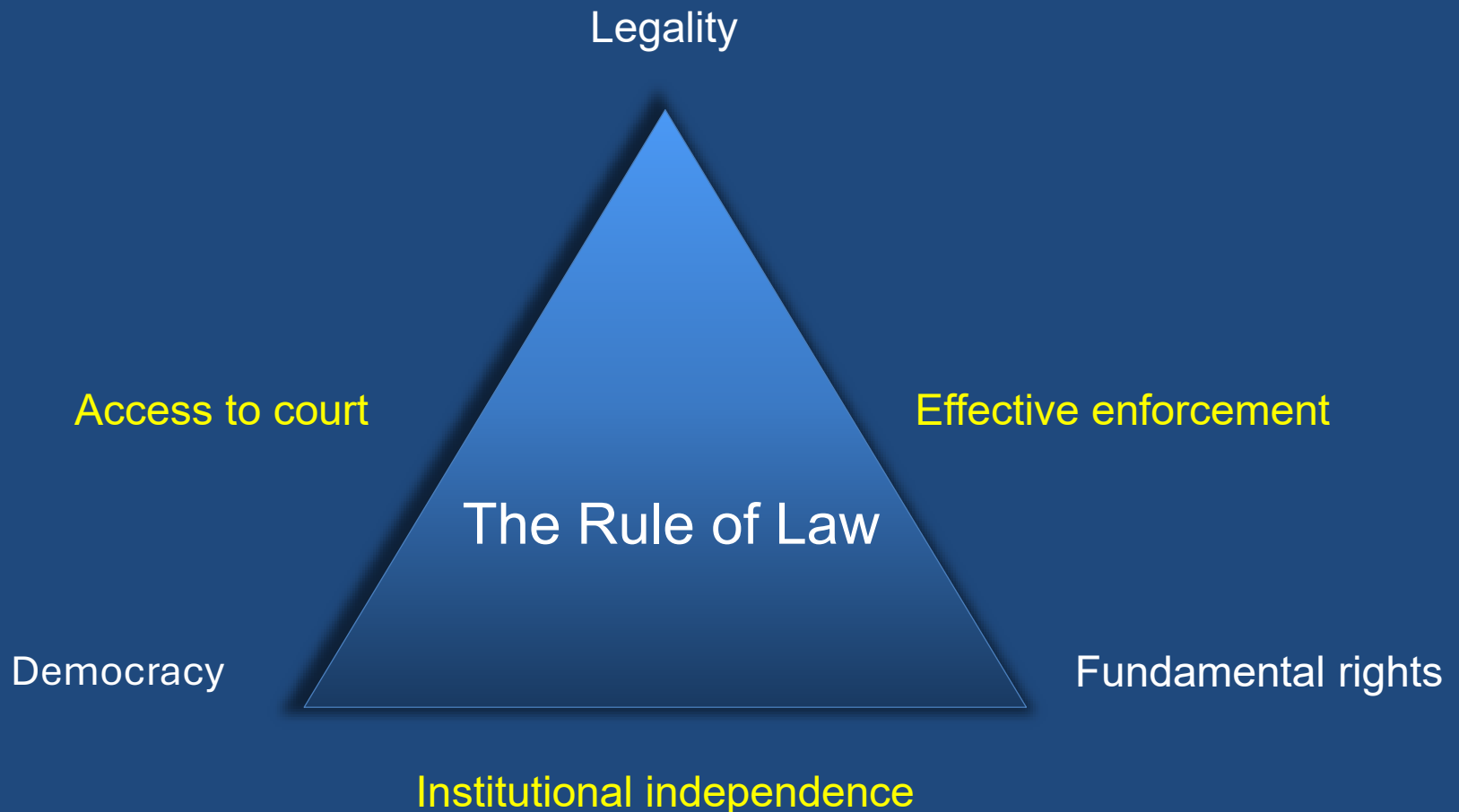


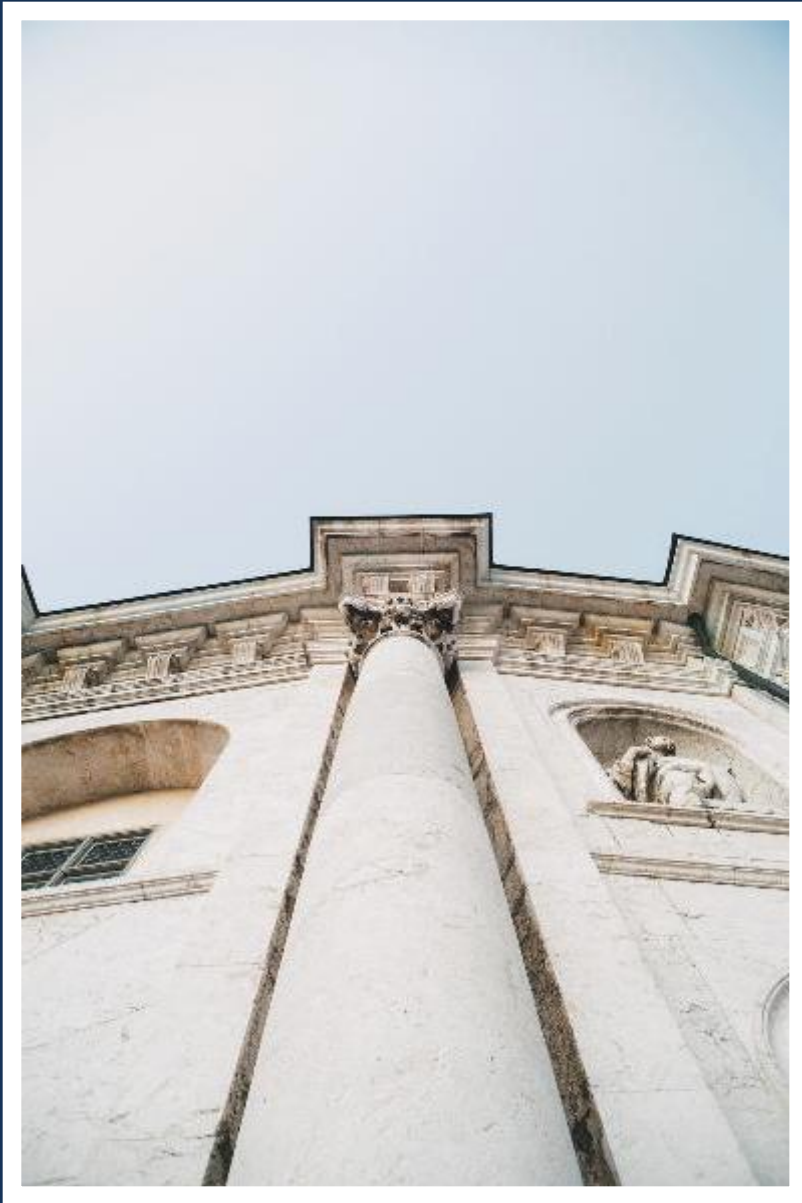
# How does the rule of law work?

## Functional elements:

- Access to court
- Institutional independence
- Effective enforcement

# The rule-of-law triad: constitutive **and functional** elements



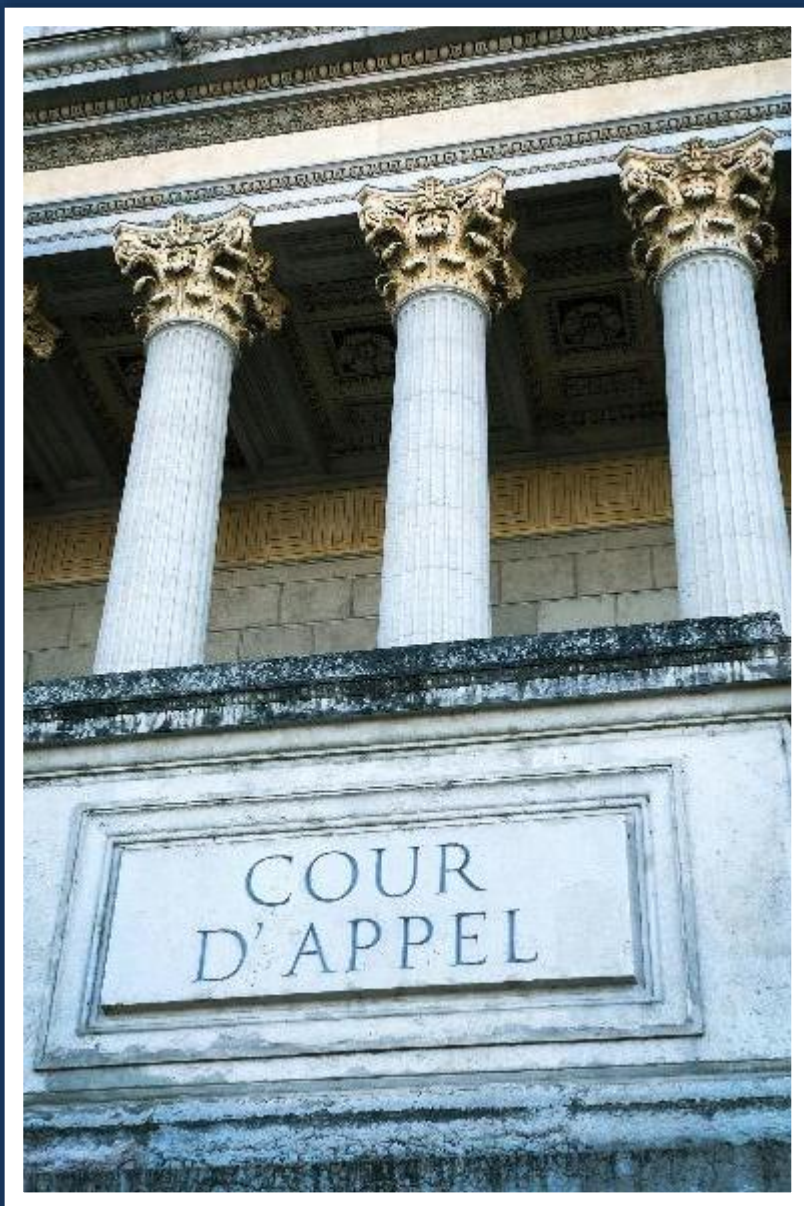


# Access to court

Right to commence action in courts (not only fairness at trial)

- Implied in Art 47(2) of Charter / Art 6§1 ECHR (*Golder v. United Kingdom*)

Right to legal aid



# Judicial independence

Article 19 TEU

C-64/16, *ASJP*  
(*Portuguese Judges*)

Structural requirement of  
judicial independence for  
Member States



# Effective enforcement

Execution of final or  
otherwise  
enforceable decisions

Legal certainty

Essential for reliance  
on the legal system



Image: C. Johansson, Unsplash

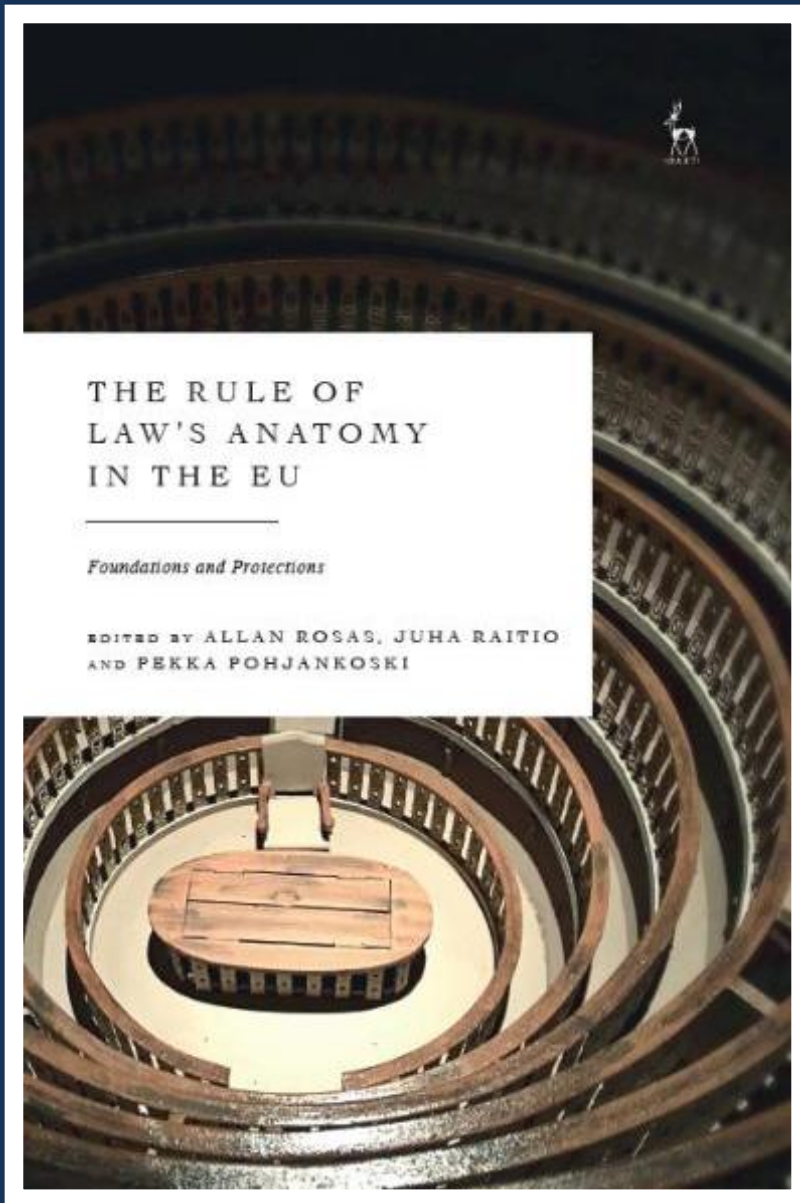
## Enforcement and the problem of executive capture

- Enforcement is different: private parties v. public bodies (the government)
- How to use the 'sword' of enforcement against the 'sword-holder'?

# The EU's competence to safeguard the rule of law

*C-156/21 Hungary v Parliament and Council*

127 The values contained in Article 2 TEU have been identified and are shared by the Member States. They define the very identity of the European Union as a common legal order. Thus, **the European Union must be able to defend those values**, within the limits of its powers as laid down by the Treaties.



# EU-level (federal) safeguards

- EU rule-of-law policy
- Promotion of democracy
- Requirements on judicial independence
  
- Article 7 TEU
- Infringement proceedings
- Budget conditionality

Proactive

Reactive



# Proactive safeguards



- Rule-of-law policy (monitoring + rule-of-law mainstreaming)
- Promotion of democracy (financial support for civil society, rules on political advertising, rules on free media and speech in digital sphere)
- Criteria for judicial independence (ECJ, ECtHR)

# Reactive safeguards



- Sanctions, conditionality, lawsuits



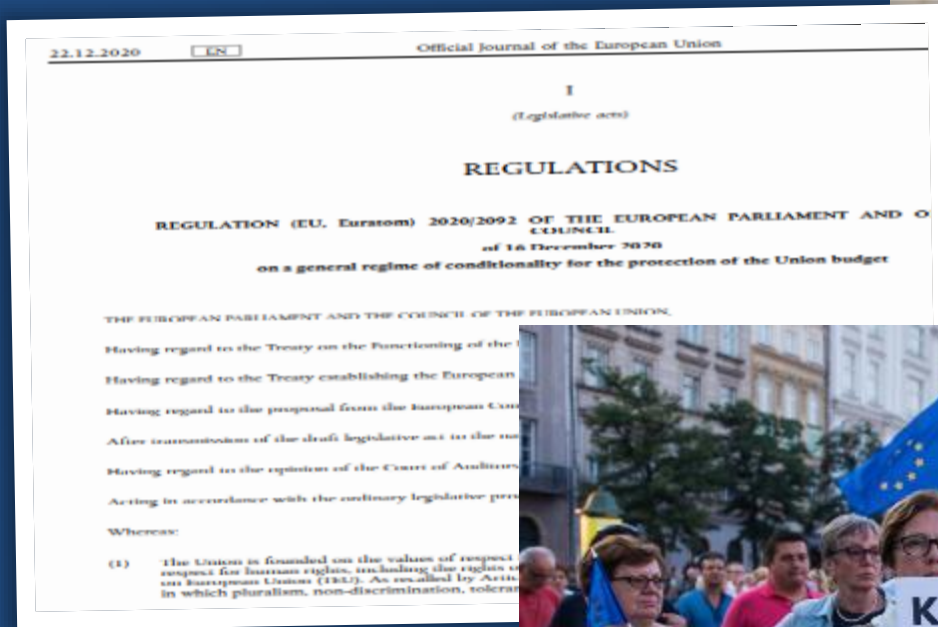
Image: Kang, Pixabay

# How do you lose the rule of law?

*The rule of law dies 'not  
in a sudden explosion but  
with a quiet whimper'*

–Laurence Tribe (*The  
Guardian*, 24 March  
2025)

# Illiberal systems and erosion of the rule of law



Photos: M. Spieske (right),  
Küllli Kittus (down left), Unsplash



Image: Kate Kasiutich, Unsplash

# Hungary

– Europe's *enfant terrible*

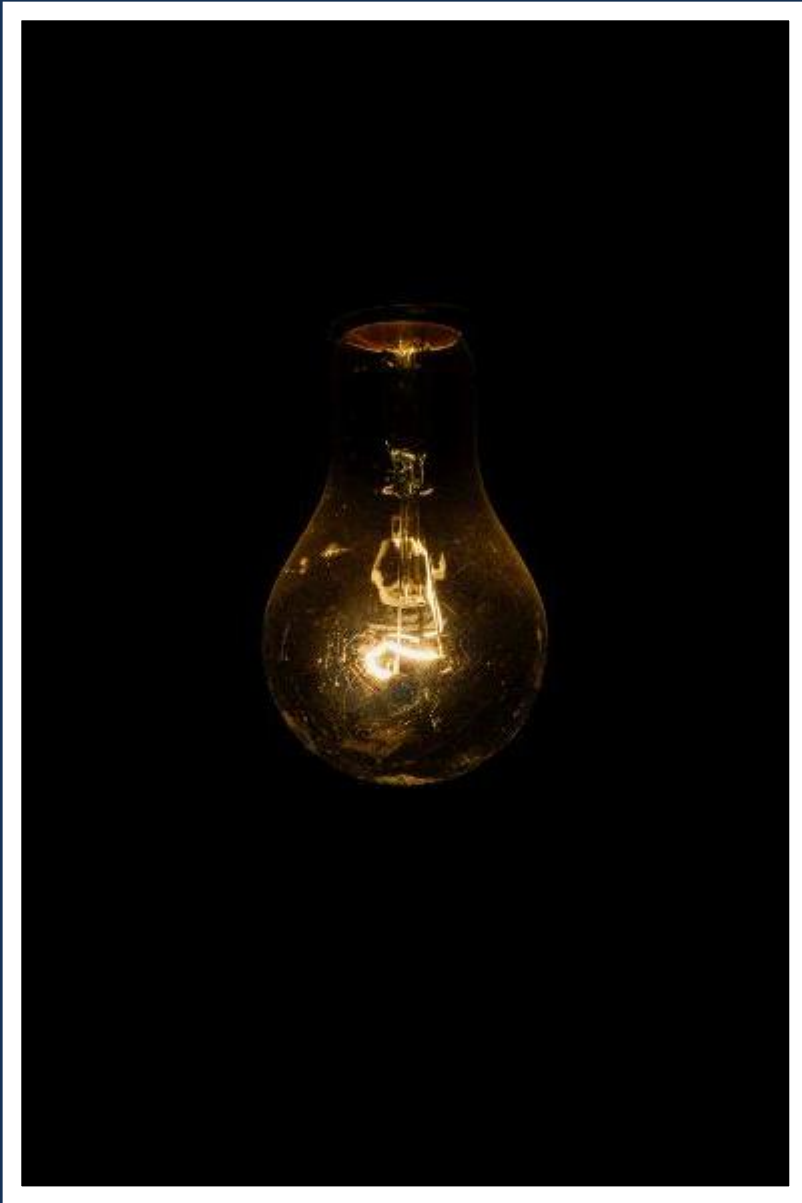
- Serious rule-of-law problems
- However political vs. legal problems!
- Reactive safeguards mostly target legal issues



# Poland's new challenges

- Restoring the rule of law
- Courts: bench formation, rulings, interpretations of the Constitution
- How to glue back a broken system?





# Conclusions

- Rule of law as a foundational EU value
- A well-defined concept in EU law
- Proactive and reactive safeguards
- Not end state, but unfinished process



# Questions?

Thank you for your attention.