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The fragility of human rights in times of rule of law erosion. The case of judicial independence in America and Europe

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The fragility of human rights in times of rule of law erosion. The case of judicial independence in America and Europe

La fragilidad de los derechos humanos en tiempos de erosión del estado de derecho. El caso de la independencia judicial en América y Europa

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Summary: I. Introduction.—II. The Rule of Law and Its Link to Human Rights as a Matter of Existential Survival of Democracies. A European Lens.—III. Human Rights Violations Related to Judicial Independence. 1. Presidential pardons and amnesties. a. Examples in the United States. b. Examples in Europe. 2. Harassment of judges and contestation of judgments. a. Examples in the United States. b. Examples in Europe.—IV. Conclusions.

Abstract: The article highlights the existence of a direct and existential relationship between human rights and the rule of law, insofar as one cannot exist without the other, and vice versa. To this end, it first reviews the historical evolution of the protection of human rights and the rule of law in both the United States and the European Union, emphasizing the international legal norms and documents in which they have been enshrined. It then takes judicial independence as a case study. The article examines the human rights that become unprotected when states undermine judicial independence, focusing on pardons and amnesties, as well as on the harassment of judges and the non-compliance with judicial decisions, in both the United States and the European Union.

Keywords: rule of law, human rights, judicial independence, the USA and the EU.

Resumen: El artículo muestra la existencia de una relación directa y existencial entre los derechos humanos y el Estado de Derecho, pues unos no pueden existir sin el otro y viceversa. Para ello, el artículo revisa primero la evolución histórica de la protección de los derechos humanos y el Estado de Derecho tanto en EE.UU. como en la UE, destacando las normas y documentos internacion-

ales en los que se han recogido, para, posteriormente, tomar como caso de estudio la independencia judicial. El artículo pasa revista a los derechos humanos que quedan desprotegidos cuando los Estados violan la independencia judicial, poniendo el foco en los indultos y amnistías y en el acoso a jueces y la desobediencia de sentencias, tanto en EE. UU. como en la Unión.

Palabras clave: *Estado de Derecho, derechos humanos, independencia judicial, EE. UU. y UE.*

I. Introduction¹

This contribution aims to explore the intrinsic relationship between the rule of law and the protection of human rights, showing how both values are being challenged today in the United States and in the European Union. The rule of law and human rights are the two sides of the same coin: where the rule of law is not upheld, the effective protection of human rights becomes unattainable. Conversely, in the absence of respect for human rights, the rule of law is neglected². Be it gradual or abrupt, any deterioration of the rule of law inevitably compromises the protection of human rights. Thus, undermining legal standards triggers a cascade of adverse effects on both individual and collective rights, since human rights can only be fully safeguarded within democratic systems governed by the rule of law³. The very essence of the rule of law lies in its capacity to ensure the dignity, freedom, and equality of all people⁴. In light of recent global developments, it is legitimate to ask whether human rights can endure the ongoing assault on legal and democratic norms.

The United States is widely recognized as the first modern liberal and representative democracy, established with the adoption of its Constitution in 1787 and its Bill of Rights in 1791, the latter of which contains the first ten amendments⁵ (freedom of religion, speech, press, assembly, and petition; the right to keep and bear arms; protection against the forced quartering of soldiers; protection against unreasonable searches and seizures; the right to due process, and protection against self-incrimination and double jeopardy; the right to a speedy and public trial with an impartial jury and to confront witnesses; the right to a jury trial in civil cases; protection against excessive bail, excessive fines, and cruel and unusual punishment; recognition that the people retain rights not specifically listed in the Constitution; and reservation of undelegated powers to the states or the people). Not

¹ This article is one of the results of the research projects PID2021-126765NB-I00 of the MICINN and CIACO/2024/191 of the GVA on the crisis of European values and resilience to hybrid threats. AI has been used to refine the English and help locate parts of the documentation.

² Bessler, D.: "The Rule of Law: A Necessary Pillar of Free and Democratic Societies for Protecting Human Rights," *Santa Clara Law Review*, vol. 61, no. 2, 2021, pp. 467-588, p. 468.

³ Apodaca, C.: "The Rule of Law and Human Rights", *Judicature*, vol. 87, no. 6, 2004, pp. 292-299, p. 294.

⁴ Baer stated that dignity, liberty, and equality are cornerstones of constitutionalism (Baer, S.: "Dignity, Liberty, Equality: A Fundamental Rights Triangle of Constitutionalism", *University of Toronto Law Journal*, vol. 59, no. 4, pp. 417-468, p. 467).

⁵ Harlan, J. M.: "The Bill of Rights and the Constitution", *ABAJ*, vol. 50, 1964, p. 918-921, p. 920, where the author speaks of rights of the American Constitution as ideological imperatives; see also Pederson, C. E.: *US Constitution & Bill of Rights*, ABDO Publishing Company, 2010, *passim*.

without reason, the forged Republic of the United States is seen as the nascent version of what today is considered a rule of law regime⁶. During the American Revolution, the colonists rejected any model of absolute power. Their opposition to Britain was based on the belief that a superior form of law, rooted in natural law, set limits on every governing body, including their own colonial legislatures. The conviction that legal principles existed above and beyond ordinary legislation became a cornerstone of their constitutional thinking. It later shaped the United States system of limited government and institutional checks on authority. The expression that in the United States “the king is the law” clearly summarizes a rule of law vision of power⁷.

Not so long before the Bill of Rights, the Virginia Declaration of Rights of 1776 had already laid down foundational principles that are consubstantial to human rights and the rule of law, such as the right to due process, equality before the law, the limitation of arbitrary power, and government by consent⁸. Although it did not use the expression “rule of law”, in many of its articles (called Sections) the Virginia Declaration enshrined most of its core elements, particularly Section one, which affirms that individuals are born free and equal, possessing inherent and inalienable rights; Section two, which clarifies that all power derives from the people, magistrates being their trustees and servants; Section 3, that reminds that government ought to be instituted for the common benefit, warning against the danger of maladministration. Additionally, Section 4 proclaims that no individual has the right to enjoy exclusive benefits or privileges derived from the community, except as compensation for public service. Section 5 underscores the preservation of the independence of the legislative, executive, and judicial branches, ensuring that each can act as a safeguard against abuses of authority. It also provides that members of the legislative and executive branches periodically return to private life, rejoining the citizenry from which they originated, and that new representatives are chosen through regular elections. Section 6 affirms the rights of suffrage and property, recalling that citizens must be free to elect their representatives, participate in decisions on taxation and legislation, and not be deprived of their possessions or subjected to laws without their own consent or that of their duly elected

⁶ Bessler, *op. cit.*, p. 499.

⁷ Humphreys, R. A.: “The Rule of Law and the American Revolution”, *Law Quarterly Review*, vol. 53, no. 1, 1937, pp. 80-98. In page 89, the author stresses that power is always abused if unchecked and unlimited.

⁸ Helderman, L. C.: “The Virginia Bill of Rights”, *Wash. & Lee L. Rev.*, vol. 3, 1941, p. 225-245; Hylton, J. G.: “Virginia and the Ratification of the Bill of Rights, 1789-1791”, *U. Rich. L. Rev.*, vol. 25, 1990, p. 433.

delegates. Similarly, Section 7 condemns any suspension of laws or interruption of their enforcement by any authority acting without the consent of the people's representatives, considering such acts contrary to citizens' rights. With respect to procedural guarantees, Section 8 ensures the right of every person to know the charges brought against them, to face their accusers and witnesses, to present evidence in their defense, and to be judged promptly by an impartial jury. It also protects individuals from self-incrimination and affirms that no one may be deprived of liberty except by due process of law or by the judgment of their peers. Ultimately, and as a fitting conclusion, Section 15 states that no free government can be preserved except through a firm adherence to justice, moderation, temperance, frugality, and virtue, and through frequent recourse to fundamental principles. The Virginia Declaration, the Constitution, and the Bill of Rights are the three instruments that collectively demonstrate the early and deliberate intertwining of fundamental rights and the rule of law in the American political tradition⁹.

For its part, in Europe, the rule of law and human rights are not merely abstract legal principles enshrined in treaties; they are foundational values that shape the Union's political identity. They are the EU's DNA¹⁰. The nature of these values as core constitutional elements was brought to the forefront during the drafting of the (ultimately unsuccessful) Constitutional Treaty of the European Union¹¹. However, the Lisbon Treaty reform revived these values by embedding them as interdependent values in Article 2 of the Treaty of the European Union (TEU), which goes like this: "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, toler-

⁹ Scheiber, H. N.: "Public rights and the rule of law in American legal history", *California Law Review*, vol. 72, 1984, p. 217-251. As this author puts it, no other expression is more honored in America than the rule of law (p. 217).

¹⁰ Among other recent contributions on this, *vide*: Sanz Caballero, S.: "Quo Vadis Europe? The decline of the rule of law in the EU: Who, why, how, what?", *Overcoming the Crisis of Democratic Values in the European Union*, Volume I, Sanz Caballero, S. and Bar Cendón, A., (eds), 2026, pp. 29-70, p. 60; Bar Cendón, A.: "The EU fundamental values: As important as difficult to protect", *Overcoming the Crisis of Democratic Values in the European Union*, Volume I, Sanz Caballero, S. and Bar Cendón, A., (eds), 2026, pp. 71-122; Puigderrajols Triadó, A. and Wouters, J.: "Do the Fundamental Values of the European Union Align with those of the Council of Europe?", *Overcoming the Crisis of Democratic Values in the European Union*, Volume I, Sanz Caballero, S. and Bar Cendón, A., (eds), 2026, pp. 185-230.

¹¹ Follesdal, A.: "Subsidiarity, Democracy and Human Rights in the Constitutional Treaty for Europe", *Journal of Social Philosophy*, vol. 37, no. 1, 2006, p. 61-80, especially from page 68.

ance, justice, solidarity and equality between women and men prevail”. The mutual reinforcement of these values is not merely rhetorical: one cannot meaningfully exist without the others, and the erosion of any one of them, including the value of democracy, threatens the integrity of the entire European legal and political order¹².

This contribution will elaborate on the existence of a strong, mutually reinforcing relationship between the rule of law and the protection of human rights, as exemplified in the case of judicial independence. It will also showcase how these core values are being neglected today in both the United States and some members of the EU. However, to do so, it is essential first to define what the rule of law entails.

II. The Rule of Law and Its Link to Human Rights as a Matter of Existential Survival of Democracies. A European Lens

Growing concern over what has come to be known as rule of law backsliding has triggered a swift and substantial expansion of the EU’s rule of law instruments¹³. The fact that the rule of law was not mentioned in the Treaties in their original form in the 1950s did not help; strikingly, human rights were also not included initially, only appearing later with the Maastricht Treaty reform of 1992 (former Article F.2 TEU). Notably, the first institution to protect human rights was the Court of Justice of the European Communities, in its *Stauder* case of 1969¹⁴, which also, remarkably, referred to the rule of law and linked it to the protection of fundamental rights¹⁵.

Although the EU’s first efforts to address political challenges to the rule of law date back to the early 2000s, when the rise of a far-right party in Austria led to the creation of the “preventive weapon” of Article 7 TEU (later incorporated through the Lisbon Treaty) and the imposition of an EU diplomatic boycott¹⁶, the range of mechanisms aimed at countering democratic and judicial backsliding has expanded dramatically since 2012. Several of

¹² Pech, L. and Grogan, J. (coords.): *Meaning and Scope of the EU Rule of Law*, Reconnect, 2020, p. 7. Accessible at: <https://reconnect-europe.eu/blog/meaning-and-scope-of-the-eu-rule-of-law/>

¹³ Bar Cendón, A.: “El Estado de Derecho en la Unión Europea y su protección en tiempos de crisis”, *La Europa de los Valores*, Sanz Caballero, S. (ed.), Aranzadi, 2024, p. 37-77, p. 39.

¹⁴ Court of Justice of the European Communities: C-29/69, *Erich Stauder v City of Ulm*, 12 November 1969, par. 7.

¹⁵ *Ibid.* par. 3.

¹⁶ Sanz Caballero, S.: “El declive del Estado de Derecho en la Unión Europea. Propuestas de solución”, *Pliegos de Yuste*, no. 24, 2024, pp. 63-78, p. 71.

these tools are directly grounded in EU primary law¹⁷. The European Commission's 2014 Rule of Law Framework¹⁸, for example, is generally viewed as a preparatory stage before launching an Article 7 TEU procedure¹⁹, whose purpose is to sanction the rogue state by political means²⁰. The Rule of Law Review Cycle is likewise justified as a means to enhance compliance with Article 2 values and to pave the way for potential Article 7 or Article 258 of the Treaty on the Functioning of the European Union (TFEU) actions, that is, through political sanctions and infringement procedures against the state before the Court of Justice, respectively²¹. The European Semester has also evolved to include closer scrutiny of national judicial systems, drawing on its foundations in Title VIII TFEU on economic and monetary governance and the secondary legislation implementing it²². Since 2020, this framework has been complemented by the Commission's annual Rule of Law Report, a preventive monitoring instrument that assesses the strength of the rule of law in each member state²³, as well as by the Conditionality Regulation²⁴, which allows the Union to suspend or restrict EU funds when breaches of the rule of law threaten the sound financial management of the EU²⁵.

¹⁷ Bauerschmidt, J.: "The Rule of Law in the European Union and the Toolbox to Defend it: Article 7 TEU, Rule of Law Report and Dialogue, Budgetary Conditionality", *The Rule of Law Under Threat*, Edward Elgar Publishing, 2024. p. 196-218, p. 198.

¹⁸ Kochenov, D. and Pech, L.: "Better late than never? On the European Commission's rule of law framework and its first activation", *Journal of Common Market Studies*, vol. 54, no. 5, 2016, p. 1062-1074.

¹⁹ Kochenov, D. and Pech, L.: "Upholding the Rule of Law in the EU: On the Commission's 'Pre-Article 7 Procedure' as a Timid Step in the Right Direction", *European Constitutional Law Review*, vol. 11, 2015, pp. 512-540.

²⁰ Wilms, G.: *Protecting fundamental values in the European Union through the rule of law: Articles 2 and 7 TEU from a legal, historical and comparative angle*, Robert Schuman Centre for Advanced Studies, European University Institute, 2017, doi: 10.2870/083300

²¹ Kochenov, D. and Pech, L.: "Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality", *Robert Schuman Centre for Advanced Studies Research Papers*, No. 24, 2015, Available at <https://ssrn.com/abstract=2625602> or <http://dx.doi.org/10.2139/ssrn.2625602>

²² Fromont, L. and Van Waeyenberge, A.: "The European Semester as a Governance Mechanism for Rule of Law Risks in the EU", *European Journal of Risk Regulation*, 2025, p. 1-10.

²³ Pech, L. and Bard, P.: "The Commission 2021 Rule of Law Report and the EU Monitoring and Enforcement of Article 2 TEU Values", 2022, available at SSRN 4100083; Sanz Caballero, S.: "El Estado de Derecho en la UE en los Informes del Consejo de Europa y de la Comisión Europea de 2021: ¿Hay luz al final del túnel?", *La UE y el Reto del Estado de Derecho*, Thomson Reuters, 2022, pp. 25-55, p. 26.

²⁴ EU: Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22 December 2020, pp. 1-10, which entered into force on 1 January 2021.

²⁵ Hegedus, D.; Christiansen, T.: "Contesting the Rule of Law in the European Union: The Creation and Implementation of the Rule of Law Conditionality Regulation", *EU Rule*

Even without a single, exhaustive definition of the rule of law in the Treaties, several provisions of primary law express its core meaning or impose obligations linked to its essential components. The first subparagraph of Article 19(1) TEU captures the essence of the rule of law by providing that the Court of Justice of the European Union shall ensure that, in the interpretation and application of the Treaties, the law is observed. Its second subparagraph, read together with Article 47 of the Charter of Fundamental Rights of the EU, enshrines the obligation to guarantee judicial independence both at the EU level and within the member states, requiring them to provide remedies sufficient to ensure effective legal protection in areas covered by Union law. From this, it is easy to see how closely respect for the rule of law is connected to the human rights typically associated with justice, such as the prohibition of arbitrariness, the right to a fair trial before impartial judges, and equality before the law²⁶.

To understand what is at stake when the rule of law is eroded, it is worth explaining that the European Union identifies four fundamental pillars as essential to a robust rule of law system, namely, judicial independence, media pluralism and freedom of expression, an efficient anti-corruption framework, and effective checks and balances²⁷. Each of these elements plays a crucial role in safeguarding human rights: Judicial independence ensures impartial protection of individual and collective rights, access to justice and equality before the law; media pluralism and freedom of expression allow for transparency and the public visibility necessary to uphold rights; combating corruption fosters fairness, equality, and justice, all of them core to human dignity; and checks and balances prevent abuses of power, securing institutional accountability, which is key to human rights. Since 2020, the European Commission's annual Rule of Law Report has consistently emphasized that well-functioning rule of law systems are those that uphold these fundamental pillars²⁸.

of Law Procedures at the Test Bench: Managing Dissensus in the European Constitutional Landscape, Cham: Springer Nature Switzerland, 2024, p. 225-241.

²⁶ Bingham, T.: *The Rule of Law*, Penguin Books, 2010, specially pages 49, 63, 72, 78, 85 and 115.

²⁷ European Commission: Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2025 Rule of Law Report. The rule of law situation in the European Union*, 8 July 2025, COM(2025) 900 final, page 2, https://commission.europa.eu/publications/2025-rule-law-report-communication-and-country-chapters_en

²⁸ European Commission: Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2020 Rule of Law Report. Communications and Country Chapter*, 30 September, 2020, https://commission.europa.eu/publications/2020-rule-law-report-communication-and-country-chapters_en

However, it was the Venice Commission of the Council of Europe that was the pioneer in this field. In 2016, its Rule of Law Checklist elaborated on these requirements, emphasizing that laws must be clear, predictable, and consistently applied. Decisions by authorities should treat individuals with dignity and equality, and those affected must have the right to challenge decisions before independent and impartial courts through fair procedures²⁹. This comprehensive legal framework, rooted in Council of Europe instruments such as the European Convention on Human Rights of 1950 (ECHR) and the Social European Charter of 1961 and 1996 but also in the European Union's Charter of Fundamental Rights of 2000, all of them supplemented by universal tools such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Cultural, Social and Economic Rights (ICESCR) of 1966, provides a necessary benchmark to analyze challenges faced within EU member states. By comparison, this framework can also help illuminate other democracies, since the ICCPR and ICESCR have been widely ratified worldwide, and much of the content of the mentioned European instruments also reflects principles of customary international law.

At its core, the rule of law means that all citizens and officials are equally bound by the law, which constrains power and ensures accountability. In other words, this principle is about limiting those in power and about the self-restraint of authorities themselves³⁰. The notion of the rule of law can be understood, at its most basic, as referring to the core attributes that law should embody: fairness, neutrality, and the ability to provide order³¹. From an operational viewpoint, it is about institutional safeguards that prevent arbitrary decision-making: a coherent set of rules, bodies that supervise their application, and protection against political interference³². Thus, the rule of law is not simply a description of legal structures or law-making powers; it signifies something more than the mere presence of institutions. Yet, when examined closely, the concept brings together potentially mixed legal and political elements, both theoretical and institutional. Importantly,

²⁹ Council of Europe: Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session, Venice, 11-12 March 2016, available at https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf

³⁰ Bassiouni, M. C.: "Challenges facing Rule-of-law Oriented World Order", *Santa Clara Journal of International Law*, vol. 8, no. 1, 2010, pp. 1-10, for whom the rule of law is based in the premise of the imposition of limits on collective and unilateral state action (p. 8).

³¹ Feinberg, J.: "Justice, Fairness and Rationality", *Yale Law Journal*, vol. 81, no. 5, April 1972, pp. 1004-1031, p. 1005.

³² Riley, S.: "Human Dignity and the Rule of Law", *Utrecht Law Journal*, volume 11, Issue 2, June 2015, pp. 91-105, p. 91.

it acts as a political ideal that presupposes limits on the exercise of power³³. Contemporary doctrine has moved beyond a minimalist view of the rule of law, focused on legal clarity and procedural predictability (the so-called “thin” approach), toward a more substantive perspective, which, in addition to these requirements, demands that laws also uphold justice and fundamental rights (the “thick” approach to the rule of law).³⁴ While legality, clarity, and legal certainty are essential procedural components of the rule of law because they prevent arbitrariness, so too is the material requirement that laws be just and respectful of human rights³⁵.

The Venice Commission outlines six interrelated dimensions of the rule of law, ranging from legality, legal clarity, and protection against arbitrariness to judicial access before independent and impartial courts, equal treatment, and respect for human rights³⁶. For the rule of law to be genuine, laws must be democratically enacted by elected representatives. That is the only way in which the general will be expressed in those laws. But, beyond that, the content of those laws must guarantee fundamental rights, making the rule of law inseparable from democracy and human rights. Together, the rule of law, democracy, and human rights form the three angles of the same triangle. It is widely accepted that the rule of law is incompatible with human rights violations or illiberal governance. These three values are of equal importance, such that the absence of any one of them renders the whole framework ineffective. In the EU, they also underpin external relations and accession criteria.

The EU’s construction links the organization’s internal governance with its external policies, conditioning relations on adherence to these fundamental values³⁷. This constitutional identity, where the EU’s external role is shaped by its internal core values, and vice versa, conditions the accession process of aspiring European states³⁸. This had always been implicit in

³³ Ferrajoli, L.: “The Past and the Future of the Rule of Law”, *The rule of law history, theory and criticism*. Dordrecht: Springer Netherlands, 2007, p. 323-352, p. 324.

³⁴ Tamanaha, B. Z.: “The History and Elements of the Rule of Law”, *Singapore Journal of Legal Studies*, 2012, pp. 232-247.

³⁵ For a critic of the liberal democratic thick conception of the rule of law and a contestation of the relation between the rule of law and human rights, see Peerenboom, R.: “Human rights and rule of law: what’s the relationship?”, *Georgetown Journal of International Law*, vol. 36, no. 3, 2005, pp. 809-946 and, especially, pages 900, 908, and 945.

³⁶ *Rule of Law Checklist*, *cit*.

³⁷ European External Action Service: *EU Action Plan on Human Rights and Democracy 2020-2027*, https://www.eeas.europa.eu/eeas/eu-action-plan-human-rights-and-democracy-0_en; Lucarelli, S. and Manners, I.: *Values and principles in European Union foreign policy*, Routledge, 2006.

³⁸ Sanz Caballero, S.: “Justice as the Key Component of the Rule of Law: The State of Play in Europe”, *Europske vrijednosti i izazovi članstva u eu.*, Cepo, D. (ed.), Hrvatska u komparativnoj perspektivi, Zagreb, 2020, pp. 61-78, p. 66.

the European construction process but only became explicit with the Copenhagen (1993) and Madrid (1995) European Council's Conclusions³⁹. And it is EU primary law from the Amsterdam Treaty of 1997. This Treaty reform stated that the Union was founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states. With the Lisbon Treaty, this provision evolved into the current Article 2 TEU. Reference should also be made to the current Article 3(5) TEU, which requires the EU, in its external relations, to uphold and promote its own values and interests while protecting its citizens. According to this provision, the EU must support free and equitable trade, combat poverty, protect human rights and ensure strict compliance with, and further development of international law, including full respect for the principles set out in the United Nations Charter. Human rights, the rule of law, and democracy have thus become central pillars in the EU accession process. Also in the EU's external policy, according to Article 21 TEU, "(t)he Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law". Human rights, the rule of law, and democracy reflect the Union's own internal development. The EU aspires to positively influence the international environment by promoting democracy, human rights, and rule of law standards abroad, in any state seeking to join the EU or engage in trade with this supranational organization⁴⁰. Inconsistent application of these values within the Union undermines its internal legitimacy and external credibility. Failure to apply those values within the EU prevents the organization from imposing rules on others, be they candidate states or third countries⁴¹. Concerning the former, the EU has been more effective in monitoring respect of human rights and the rule

³⁹ Kochenov, D.: 'Behind the Copenhagen Facade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law', *European Integration Online Papers*, vol. 8, 2004, pp. 1-24; Hillion, C. (ed): *EU Enlargement: A Legal Approach*, Hart Publishing, 2004, p. 4.

⁴⁰ Pech, L.: 'Promoting the Rule of Law Abroad: On the EU's limited contribution to the shaping of an international understanding of the rule of law', Amtenbrink, F. and Kochenov, D. (eds), *The EU's Shaping of the International Legal Order*, CUP, 2013, p. 115.

⁴¹ Janse, R.: "Is the European Commission a credible guardian of the values? A revisionist account of the Copenhagen political criteria during the Big Bang enlargement", *ICON*, vol. 17, no. 1, 2019, pp. 43-46, p. 46.

of law in candidate states than in member states⁴². The political sanctioning mechanism against rogue member states, enshrined in Article 7 TEU, has proven ineffective in the face of misguided solidarity among member states, which has so far prevented any sanction from being imposed on non-compliant governments. Concerning third countries, the EU has been accused of hypocrisy in the use of the conditionality clause, as security or economic priorities have usually overridden human rights considerations in commercial agreements⁴³.

A robust respect for the rule of law and human rights is not only a normative imperative but also an essential condition for any functioning democracy. The following sections will examine one core element of the rule of law, judicial independence, in relation to the human rights most closely linked to it, namely, the access to justice and right to a fair trial, equality before the law, and access to justice. The survival of democratic regimes is contingent upon the protection of these rights.

III. Human Rights Violations Related to Judicial Independence

A critical precondition for upholding the rule of law is ensuring judicial independence. Any form of external or internal interference in judges' impartial duties risks undermining the very fabric of the rule of law. Judicial independence is not a privilege granted to judges for their benefit; it is a foundational principle essential to the functioning of any democratic state⁴⁴. Judicial independence guarantees fair trials and serves as the cor-

⁴² Kochenov, D.: "Overestimating Conditionality", *University of Groningen Faculty of Law Research Paper Series*, no. 03, 2014, p. 6.

⁴³ Saltnes, J. D.: "The European Union's human rights policy: is the EU's use of the human rights clause inconsistent?", *Global Affairs*, vol. 4, issue, 2-3, 2018, pp. 277-289, available at <https://doi.org/10.1080/23340460.2018.1535251>; Zimelis, A.: "Conditionality and the EU-ACP Partnership: A Misguided Approach to Development?", *Australian Journal of Political Science*, vol. 46, no. 3, 2011, pp. 389-406, <https://doi.org/10.1080/10361146.2011.595698>; Taylor, I.: Bait and Switch: "The European Union's Incoherency towards Africa", *Insight on Africa*, vol. 8, no. 2, 2018, pp. 96-111, <https://doi.org/10.1177/0975087816646890>.

⁴⁴ United Nations High Commissioner for Human Rights: *Basic Principles on the Independence of the Judiciary*, adopted on 6 September 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, available at www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary; U.S. Federal Judicial Centre: *Judicial Independence in the United States: Current Issues and Relevant Background Information*, available at <https://www.fjc.gov/content/judicial-independence>; Council of Europe: *Plan of action on strengthening judicial independence and impartiality*, CM(2016)36 final, adopted at the 1253rd meeting of the Ministers' Deputies, on 13 April 2016, <https://rm.coe.int/1680700125>

nerstone of justice. Decisions undermining judicial independence, often disguised as reforms, are unacceptable. Judicial independence is a fundamental guarantee of the right to a fair trial. Judges make decisions that impact citizens' lives, freedoms, rights, duties, and property. Judicial independence is not merely a right for judges but a necessity for all those who seek and expect justice⁴⁵.

When judicial independence is compromised and the judiciary falls under the influence or control of the executive branch, the fundamental human right to a fair trial is severely jeopardized. In Europe, judicial independence is enshrined in Article 6 of the European Convention on Human Rights and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. These European provisions guarantee the right to an effective remedy before a tribunal, the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, the right to be advised, defended, and represented, the right to be presumed innocent until proven guilty according to law, the right to be informed promptly of the nature and cause of the accusation, and to have adequate time and facilities for preparing a defense, among other rights. Additionally, if judges follow governmental directives, the right to equality and non-discrimination will be impacted. There will also be a risk that similar wrongful actions will be prosecuted (or not) depending on the identity or political affiliation of the suspect. The fairness of the judicial process will likely depend on whether the accused aligns with the political establishment. States where the judiciary is captured can hardly guarantee human rights. If judges fail to enforce the law impartially, citizens will not be treated equally. In a way, there is the subjective right to an independent judge⁴⁶. This underscores the importance of impartial judges for a healthy democracy and a robust rule of law regime⁴⁷.

In the United States, the rule of law is intrinsically linked to judicial independence, understood as a structural requirement that ensures government action remains subject to the law. Courts play a central role in interpreting and enforcing the Constitution, and this function presupposes their ability to act free from political influence⁴⁸. Judicial independence is pri-

⁴⁵ International Association of Judges: *The Universal Charter of the Judge*, adopted in Taipei on 17 November 1999, <http://www.iaj-uim.org/universal-charter-of-the-judges/>, articles 1 to 5.

⁴⁶ Bustos Gisbert, R.: "Judicial Independence in European Constitutional Law", *European Constitutional Law Review*, vol. 18, no. 4, 2022, pp. 591-620. doi:10.1017/S1574019622000347

⁴⁷ United Nations Office on Drugs and Crime: *Bangalore Principles of Judicial Conduct* (endorsed by the Economic and Social Council in ECOSOC resolution 2006/23 "Strengthening basic principles of judicial conduct", July 2006).

⁴⁸ Pro, P. M.: "Defending Judicial Independence and the Rule of Law", *Communiqué*, August 2025, <https://clarkcountybar.org/tag/communique-august-2025/>

marily secured at the federal level through Article III of the Constitution, which grants federal judges life tenure “during good behaviour” and protects their salaries. These guarantees are intended to protect judges from pressure by the political branches, particularly when adjudicating politically sensitive disputes⁴⁹. This constitutional framework enables courts to exercise judicial review, allowing them to set aside legislative or executive acts and thereby uphold constitutional supremacy and legal certainty, core elements of the rule of law⁵⁰. In addition to Article III, judicial independence is reinforced by statutory provisions as well as impeachment procedures that limit the removal of judges to exceptional cases of serious misconduct. While the federal system strongly emphasizes independence, the picture is more complex at the state level, where many judges are elected and therefore exposed to partisan pressures. Although there is a potential impact of judicial elections on impartiality and public confidence in the courts, the U.S. constitutional doctrine continues to treat judicial independence as a necessary condition for guaranteeing impartial adjudication, equal application of the law, and effective legal remedies, all of which are essential components of the rule of law⁵¹.

The International Covenant on Civil and Political Rights is clear about the importance of judicial independence. Article 14 of this universally accepted legal instrument guarantees a comprehensive set of rights related to justice. The effective enjoyment of these rights relies entirely on the judiciary’s independence from interference by the legislative and executive branches. This international treaty affirms that all individuals are equal before the courts and everyone is entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. It further provides that anyone charged with a criminal offense must be presumed innocent until proven guilty according to law. Individuals have the right to be promptly informed, in detail and in a language they understand, of the nature and cause of the charges against them. They are also entitled to adequate time and facilities to prepare their defense and to communicate with the legal counsel of their choosing. The right to be tried without undue delay, to be present during the trial, and to defend oneself either personally or through legal assistance of one’s choice is also protected. Where the interests of justice require, legal assistance must be provided without cost if the

⁴⁹ Hamilton, A.: “The Federalist No. 78: The Judiciary Department”, *The Federalist Papers*, 1788.

⁵⁰ Redish, M. H.: *Judicial Independence and the American Constitution: A Democratic Paradox*, Stanford University Press, 2017, passim.

⁵¹ U.S. Supreme Court: *Caperton v. A.T. Massey Coal Co.*, 556 U.S., pp. 882, 886 and 889 (2009).

individual lacks the means to pay. Defendants have the right to examine, or have examined, witnesses against them, and to obtain the attendance and examination of witnesses on their behalf under the same conditions. If they do not understand or speak the language used in court, they are also entitled to free interpretation services. Additional safeguards include the right not to be compelled to testify against oneself or to confess guilt, the right to have one's conviction and sentence reviewed by a higher tribunal per the law, and the right not to be tried or punished again for an offense for which they have already been finally convicted or acquitted.

Any interference with the judiciary, whether through harassment, undue influence, attempts at judicial capture, or the systematic erosion of the authority of judicial decisions, represents a serious threat to judicial independence and, consequently, to the separation of powers, which constitutes an essential pillar of the rule of law⁵². Both forms of deviations risk impairing fundamental rights closely linked to the proper administration of justice, such as access to a court, the right to a fair trial, the rights of the defense, the presumption of innocence, the right to a reasoned decision, the right to appeal, and equality before the law. This does not mean that judicial conduct should remain beyond scrutiny. In fact, equally problematic is the existence of biased or politically motivated conduct by judges themselves, insofar as it departs from the impartial application of the law and the principles of justice⁵³. Where reasonable doubts as to a judge's impartiality arise, mechanisms of recusal and disqualification must be available. Where a judgment has already been rendered, parties must retain the right to appeal or to seek its annulment through appropriate legal remedies. Finally, in instances of manifestly arbitrary adjudication, judges should be subject to reporting mechanisms and, where appropriate, disciplinary or even criminal liability. Judicial independence is not merely a formal principle; the impartiality of courts is essential to ensuring that legal outcomes are based on evidence and law rather than on political expediency or internal and external pressures. Beyond individual rights, interference erodes public confidence in the judiciary and threatens democratic institutions. Protecting judicial independence requires robust institutional safeguards, accountability mechanisms, and a culture of integrity within the judiciary. The opposite leads to insecurity, uncertainty and arbitrariness⁵⁴.

The following pages will explore certain factors that compromise judicial independence, along with their impact on specific human rights. The

⁵² Article 1 of the *Universal Charter of the Judge*, *cit.*

⁵³ *Ibidem*, Articles 6 and 7.

⁵⁴ Villegas Fernández, J. M. and Rodríguez-Blanco, V.: The Independence of the Judiciary: Meaning and Threats, *Juridica*, vol. 31, 2022, <https://doi.org/10.12697/JI.2022.31.06>

analysis will include examples observed of such breaches both in the USA and in the EU.

1. *Presidential pardons and amnesties*

Recent developments in several countries reveal persistent pressures on the judiciary, manifested in various ways. These include the arbitrary or questionable use of executive pardons granted to individuals convicted for actions aligned with the government's interests, as well as the adoption of legislative amnesties. Such trends —observed, among others, in both the United States and Europe— raise human rights concerns, as these acts of clemency may compromise the principle of equality before the law and the right to non-discrimination, particularly when comparable offenders do not receive similar treatment. Many legal systems provide mechanisms for extinguishing criminal penalties, though in different forms. Pardons typically revoke the sentence of a specific individual, whereas amnesties are broader, impersonal retroactive measures that exempt a category of conduct from criminal liability and thereby remove the responsibility of those who committed it⁵⁵. While social reintegration, political reconciliation, transitional justice, or peacebuilding may justify recourse to such measures, they inevitably affect the equal treatment of those who, having committed the same offences, are not included among the beneficiaries because their criminal action did not have the political connotation that is the object of the executive's or legislative's mercy.

a. Examples in the United States

In the USA, mention can be made of the surprising and unprecedented presidential pardons issued by the Biden administration in the final days of his term in January 2025. President Biden granted preemptive last-minute pardons to several of his relatives, including his brothers, sister, and notably his son Hunter Biden, who had been previously sentenced, as well as to public figures such as Anthony Fauci and members of the January 6 congressional investigation committee⁵⁶. These pardons were granted despite none of the beneficiaries having been formally prosecuted at the time, except for his

⁵⁵ Mandozai, M. S., & Zadrán, A.: "Characteristics and Effects of Amnesty and Pardon", *Integrated Journal for Research in Arts and Humanities*, 3(3), 2023, pp. 89-94, p. 91.

⁵⁶ U.S. Department of Justice: Office of the Pardon Attorney, *Pardons Granted by President Joseph Biden (2021-2025)*, 19 January 2025, <https://www.justice.gov/pardon/pardons-granted-president-joseph-biden-2021-2025>.

son Hunter. The official reasoning was to protect them from politically motivated legal actions, but the decision has been criticized as a misuse of presidential power that may violate the principle of equality before the law⁵⁷. Presidential pardons are not restricted to the Biden administration. President Trump issued a broad and controversial pardon in January 2025 that applied to the vast majority of individuals involved in the assault on the Capitol on January 6, 2021⁵⁸. This included both individuals who had already been sentenced and others whose cases were still pending. The pardon reportedly covered a wide range of offenses, including serious crimes such as assaulting law enforcement officers during the attack. While not every single participant may have been explicitly included, the proclamation granted a “full, complete, and unconditional pardon” to all individuals convicted of offenses “related to events at or near the Capitol” on that day, raising serious concerns about political favoritism and unequal treatment under the law⁵⁹. These examples, from the two most recent American administrations, demonstrate the risk of using presidential pardons that grant privileges to specific individuals in contravention of the principle of equality, for political reasons.

b. Examples in Europe

A comparable example in Europe is the amnesty law passed in Spain in 2024, which remits the offences of those involved in the events surrounding the 2017 attempted coup d’état in the region of Catalonia (commonly referred to as the “procés”)⁶⁰. The law also undermines the authority of the judiciary as it has the effect of cancelling and/or preventing future judicial procedures, as well as the finalization of pending ones⁶¹. In this respect, it somehow challenges the independence of the judiciary, as an integral part of the separation

⁵⁷ Gramlich, J.: Biden granted more acts of clemency than any prior president, Pew Research Center, 7 February 2025, <https://www.pewresearch.org/short-reads/2025/02/07/biden-granted-more-acts-of-clemency-than-any-prior-president/>

⁵⁸ The White House: Presidential Actions: Granting pardons and commutation of sentences for certain offenses relating to the events at or near the United States Capitol on January 6, 2021. <https://www.whitehouse.gov/presidential-actions/2025/01/granting-pardons-and-commutation-of-sentences-for-certain-offenses-relating-to-the-events-at-or-near-the-united-states-capitol-on-january-6-2021/>

⁵⁹ Evans Ibingo I.: “Pardon” as an escalating impediment to criminal justice in democracy”, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, vol. 16, no. 2, 2025, pp. 168-181, p. 179.

⁶⁰ Spanish State Presidency: BOE-A-2024-11776, no.141, 11 June 2024, de amnistía para la normalización institucional, política y social en Cataluña. <https://www.boe.es/eli/es/lo/2024/06/10/con>

⁶¹ Council of Europe: European Commission for Democracy through Law: Spain Opinion on the Rule of Law Requirements of Amnesties, with Particular Reference to the Parlia-

of powers. The law grants amnesty for a wide range of criminal, administrative, and accounting offenses committed during an also very long period of time (between 1 November 2011, and 13 November 2023), in connection with actions promoting the secession of Catalonia. Among the amnestied offenses are embezzlement of public funds, disobedience, public disorder, assault against authority, membership in criminal groups, and other related crimes —including some involving violence, such as injuries and crimes against moral integrity. In terms of human rights, the issue is that someone charged with these same crimes, if committed outside Catalonia and unrelated to the secessionist process, does not benefit from this measure of grace, which has raised concerns about unequal treatment under the law. The law specifically excludes in its Article 2.c, terrorism where there has been a serious and intentional violation of human rights, as well as certain crimes that directly affect the financial interests of the European Union in Article 2.e.

As of mid-2025, a good number of individuals had already benefited from the law, through the cancellation of convictions, dismissal of charges, or annulment of legal proceedings, with estimates suggesting that the total number of beneficiaries is more than 300 people⁶². The Spanish Supreme Court raised constitutional challenges to several parts of the law, particularly those relating to crimes of public disorder and assault against law enforcement, arguing that it may violate principles of legal certainty and equality before the law⁶³. Nevertheless, the Spanish Constitutional Court upheld the law in a narrow ruling, stating that the amnesty serves a legitimate purpose of promoting social cohesion and political normalization⁶⁴. Critics, however, argue that the law functions in part as self-amnesty, as it benefited some of the same political actors who voted in favor of it in Parliament⁶⁵. Two preliminary questions are pending before the Court of Jus-

mentary Bill for the Institutional, Political and Social Normalisation of Catalonia (adopted by the Venice Commission at its 138th session, Venice, 15-16 March 2024), p. 16.

⁶² Solé, O.: La amnistía supera su primer año con el aval del TC y más de 300 beneficiados pero pendiente de Puigdemont, *El Diario.es*, 28 June 2025.

⁶³ Spanish Supreme Court. Criminal Chamber. July 24, 2024. Recurso de casación. Procedure: 3269/2022. Auto de planteamiento de cuestión de inconstitucionalidad sobre el artículo 1 de la Ley Orgánica 1/2024, de 10 de junio, de amnistía para la normalización institucional, política y social en Cataluña.

⁶⁴ Spanish Constitutional Court: BOE-A-2025-15939. Pleno. Sentencia 137/2025, de 26 de junio de 2025. Recurso de inconstitucionalidad 6436-2024. Interpuesto por más de cincuenta diputados y más de cincuenta senadores de los grupos parlamentarios Popular en el Congreso de los Diputados y en el Senado, respectivamente, en relación con la Ley Orgánica 1/2024, de 10 de junio, de amnistía para la normalización institucional, política y social en Cataluña.

⁶⁵ Ramos Rodríguez, L.: «Una autoamnistía monstruosa», Aragón, M., Gimbernat, E. and Agustín Ruiz Robledo, A (eds.), *La amnistía en España, Constitución y Estado de Derecho*, Colex, A Coruña, 2024.

tice on this particular issue, as both the National High Court of and the Court of Auditors have requested the Luxembourg Court to clarify whether certain provisions of the Spanish amnesty law may be incompatible with the equality before the law and the right to effective judicial protection protected by the Charter of Fundamental Rights and whether it respects the Directive (EU) 2017/541 on the fight against terrorism.

Measures of clemency must comply with the constitutional framework and pursue a legitimate higher purpose, such as social reintegration, democratic transition, or political reconciliation. They should also be carefully attuned to the broader social context, must never apply to serious international crimes or human rights violations, and cannot be used to shield the policymakers who adopt them, or their close associates, from accountability.

2. *Harassment of judges and contestation of judgments*

Public discreditation of judges whose decisions displease the executive branch, as well as attacks on those prosecuting individuals close to the government, have become increasingly common⁶⁶. Harassing judges due to their rulings or the cases they handle constitutes clear interference by the executive and/or legislative branches in the judiciary's work. In rule of law systems, there are established democratic means to challenge controversial rulings or abusive judges (such as recusals and appeals) so direct political attacks are wholly unjustifiable and may even constitute criminal offenses⁶⁷.

When judges face harassment, threats, or undue pressure related to their rulings or cases, several fundamental human rights are at stake, both those of the judge individually and of society as a whole. From the judge's perspective, such actions may violate the right to liberty and personal security, protected under Article 9 of the ICCPR and Article 3 of the ECHR. Threats of violence, surveillance, or physical intimidation infringe upon their physical integrity and may amount to inhuman or degrading treatment, protected under Article 7 of the ICCPR and Article 3 of the ECHR. Harassment often includes unjustified intrusions into private and family life, such as smear campaigns or exposing personal information publicly, violating the right to

⁶⁶ Bright, S. B.: "Political attacks on the judiciary: Can justice be done amid efforts to intimidate and remove judges from office for unpopular decisions", *NYUL Rev.*, vol. 72, 1997, pp. 308-332.

⁶⁷ Barua, P., Makkar, S., and Hariharan, V.: "Judicial Recusal: Comparative Analysis" *GNLU Law Review*, vol. 7, 2020, pp. 1-16.

privacy under Article 8 of the ECHR and Article 17 of the ICCPR. Preventing judges from expressing legitimate concerns about threats to judicial independence may violate their right to freedom of expression under Article 10 of the ECHR and Article 19 of the ICCPR. Defamatory attacks or politically motivated disciplinary procedures also threaten their dignity and reputation, protected under international law.

Beyond the individual impact, judicial intimidation undermines society's right to an independent and impartial tribunal, guaranteed by Article 14 of the ICCPR and Article 6 of the ECHR. Judicial independence is fundamental to the rule of law; when compromised, the public loses assurance of equal protection before the law and access to effective remedies, especially in cases involving state interests⁶⁸. This erosion disproportionately harms vulnerable groups, raising concerns about non-discrimination and equality before the law. Moreover, harassment of judges threatens democracy itself. An independent judiciary maintains checks and balances, upholds constitutional rights, and ensures government accountability⁶⁹. Systematic or politically motivated attacks weaken public confidence in legal institutions and create a chilling effect that deters judges from impartiality. Thus, harassment is not merely a personal issue but a broader human rights concern that weakens democratic governance and the rule of law.

a. Examples in the United States

In the United States, several documented instances reveal executive branch rhetoric and actions that intimidate the judiciary, threatening judges' independence and potentially violating their rights and due process guarantees. A notable pattern is the public attacks of the administration against federal judges whose rulings counter the executive's agenda, repeatedly labeling judges as "obstacles to democracy"⁷⁰ or "disgraces" and "lunatics"⁷¹ especially those blocking his immigration policies or other initiatives. These public condemnations, amplified through social media, have been

⁶⁸ Bright, *cit.*, p. 325.; Jaworski, L.: Judicial Intimidation: A Threat to the Advocate's Independence, *Litigation*, vol.1, no.1, 1975, pp. 11-13.

⁶⁹ Pérez, A. T.: *In Nobody's Name: A Checks and Balances Approach to International Judicial Independence*, Max Planck Institute for Comparative Public Law and International Law, 2017, *passim*.

⁷⁰ Gregory, M.: "Like many populist leaders, Trump accuses judges of being illegitimate obstacles to safety and democracy", *The Conversation*, 23 May 2025.

⁷¹ Brennan Center for Human Rights: "In His Own Words: The President's Attacks on the Courts", 14 February 2020, <https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts>

viewed as attempts to undermine public trust and pressure judges to align with executive preferences⁷².

In some cases, executive officials have gone further, calling for impeachment of judges after controversial rulings⁷³. These threats often follow judicial decisions that temporarily block policies favored by the executive. For instance, when courts challenged limits on administrative restructuring, political allies and some executive members called for impeachments or further court restructuring. Legal scholars and judicial leaders have warned that such actions endanger judicial independence and separation of powers⁷⁴. Direct interference occurs when executive officials resist complying with judicial decisions, either openly or through implicit threats of non-compliance⁷⁵. During disputes over immigration enforcement or environmental regulations, some executive actors have signaled intentions to disregard court orders or delay implementation. While often indirect, these tactics chill the judiciary, especially when judges see their rulings ignored. For example, in April 2025, the federal administration deported foreign nationals deemed gang members to countries like Venezuela, despite federal judges' orders to halt removals. The deportations sparked controversy, relying on the 1798 Alien Enemies Act, historically wartime legislation⁷⁶. Judges have also been pressured to close asylum cases by arguing that expelled individuals are no longer on U.S. soil, raising questions about the value of judicial decisions for the executive⁷⁷. Evidence also exists of deporting U.S. citizen children to Honduras with their foreign mothers, underscoring due process concerns amid the Trump ad-

⁷² Stone, P.: "US judges who rule against Trump are being barraged with abuse and threats, experts warn". *The Guardian*, 17 May 2025.

⁷³ NBC News. American Bar Association backs "rule of law" after Musk calls for judges to be impeached, 4 March 2025, <https://www.nbcnews.com/politics/justice-department/american-bar-association-backs-rule-law-elon-musk-calls-judges-impeach-rcna194662>

⁷⁴ Citron, R.: "Separation of Powers Conflict and Conciliation: President Trump and Chief Justice Roberts Defend their Institutions and Arrive at a Détente", *Verdict*, 17 May 2025, <https://verdict.justia.com/2025/06/17/separation-of-powers-conflict-and-conciliation>

⁷⁵ Baio, A.: "What order? Trump team ignoring 1 in 3 major judicial rulings against them, analysis finds", *The Independent*, 21 July 2025, <https://www.independent.co.uk/news/world/americas/us-politics/trump-federal-court-ruling-ignore-b2792939.html>

⁷⁶ Yon Ebright, K. & Goitein, E.: "Trump Is Attempting to Use Wartime Powers in the United States. To serve his deportation agenda, the president is warping an archaic, discredited law", *The Atlantic*, 24 April 2025. <https://www.theatlantic.com/ideas/archive/2025/04/alien-enemies-act-trump/682565/>

⁷⁷ Clarembaux, P. and Toll Pifarré, R.: "Gobierno de Trump pide a los jueces cerrar casos de asilo de venezolanos expulsados a la cárcel de pandilleros en El Salvador", *Univisión Noticias*, 24 April 2025, [univision.com/noticias](https://www.univision.com/noticias)

ministration's immigration crackdown⁷⁸. There have also been cases where executive officials threaten or initiate misconduct complaints against judges, seemingly in retaliation for their decisions. For example, Judge James Boasberg (who oversaw high-profile executive oversight cases) was reportedly targeted by Attorney General who threatened formal complaints after the judge raised concerns about executive noncompliance with court orders⁷⁹. Though legal in form, such complaints function as indirect intimidation when wielded by powerful political figures. This could amount to lawfare.

Even absent direct executive orders, executive rhetoric has been linked to real-world intimidation. The “pizza doxxing” phenomenon, that is, repeated unwanted deliveries of pizzas sent anonymously to judges' homes, has occurred shortly after judges were criticized by executive officials⁸⁰. Though carried out by private individuals, the hostile context fostered by executive condemnation increases harassment risk. On April 24, 2025, a federal judge in California issued an injunction preventing the Trump administration from denying or conditioning federal funds to “sanctuary” jurisdictions (cities and counties limiting cooperation with federal immigration enforcement). The ruling challenged executive orders withholding funds from non-compliant jurisdictions, emphasizing executive overreach. This controversy highlights escalating tension between federal authority and local discretion⁸¹. The tension intensified when, on April 26, the FBI arrested a local judge on charges of obstructing immigration agents attempting to arrest an undocumented migrant at a courthouse⁸². On May 7, 2025 Chief Justice John Roberts delivered pointed remarks in Buffalo, stating “government doesn't work if the judiciary is not independent,” signaling concern over political attacks against judges undermining separation of

⁷⁸ Andone, D.: “3 children who are US citizens —including one with cancer— deported with their mothers, lawyers and advocacy groups say”, *CNN*, 27 April 2025, <https://www.cnn.com/2025/04/27/us/children-us-citizens-deported-honduras/index.html>

⁷⁹ Hari, R.: “DOJ files misconduct complaint against federal judge James Boasberg over anti-Trump remarks, seeks recusal from key case”, *Mint*, 29 July 2025, <https://www.livemint.com/news/us-news/doj-files-misconduct-complaint-against-federal-judge-james-boasberg-over-anti-trump-remarks-seeks-recusal-from-key-case-11753797503546.html>

⁸⁰ Macfarlane, S. and Rosen, J.: “Federal judges targeted nationwide by “pizza doxxings”, *CBS News*, 13 May 2025, <https://www.cbsnews.com/news/pizza-doxxings-federal-judges/>

⁸¹ Grumbach, G. & Gregorian, D.: Judge blocks Trump bid to halt federal funding for sanctuary cities, *NBC News*, 24 April 2025, <https://www.nbcnews.com/politics/immigration/judge-blocks-trump-bid-halt-federal-funding-sanctuary-cities-rcna202828>

⁸² Barret, D.: “Wisconsin Judge Arrested, Accused of Shielding Immigrant from Federal Agents”, *The New York Times*, 26 April 2025, <https://www.nytimes.com/2025/04/25/us/politics/fbi-arrest-judge.html>

powers⁸³. Around the same time, multiple outlets reported spikes in threats, and harassment targeting federal judges opposing the administration. A Reuters investigation on May 2 detailed incidents against judges and families; follow-ups in mid- and late-May documented increasing threats and judges seeking enhanced security resources⁸⁴. On July 21, 2025 *The Washington Post* published a review of litigation against administration actions since January, finding that in about one-third of adverse rulings, officials were accused of delaying, re-labeling blocked measures, or providing misleading assurances, prompting judges across ideologies to question executive good faith⁸⁵. The report linked these patterns to battles over grant freezes and agency downsizing.

Two August 2025 cases highlighted these dynamics. First, a significant constitutional confrontation emerged in New Jersey over the appointment of an interim U.S. attorney. Under federal law, district judges are allowed to appoint a temporary U.S. attorney if the executive branch fails to secure Senate confirmation for a nominee in four months. When the interim term of Alina Habba (former Trump's personal attorney appointed as New Jersey attorney by the administration) expired, the district court exercised its authority to name a replacement. However, the executive branch removed the new appointee and reinstated Habba under a different title, this time without any term limit. This move triggered sharp criticism from legal experts and members of Congress, who argued that it undermined judicial oversight and violated constitutional norms. A federal judge subsequently agreed to hear a case questioning the legality of the executive's maneuver, while administration lawyers blamed the judiciary for provoking what they called a "constitutional confrontation"⁸⁶. This episode further illustrates the growing pattern of executive defiance toward judicial decisions and the institutional checks they represent. Second, on August 15, the D.C. Circuit lifted a district injunction blocking mass layoffs at the

⁸³ Craig, C.: "Roberts's remarks in Buffalo emphasizing judicial independence", *Democrat and Chronicle*, 2025, <https://eu.democratandchronicle.com/story/news/2025/05/08/chief-justice-john-roberts-stresses-need-for-judicial-independence/83509268007/>

⁸⁴ Parker, A., Spector, M., Eisler, P., So, L., Raymond, N.: "A Special Reuters Report. Threats and harassment toward judges surge in 2025: Reuters investigation". 2 May 2025, <https://www.reuters.com/investigations/these-judges-ruled-against-trump-then-their-families-came-under-attack-2025-05-02/>

⁸⁵ Washington Post: "Trump officials accused of defying 1 in 3 judges who ruled against him. Systematic analysis of executive noncompliance with adverse rulings", 21 July 2025, <https://www.washingtonpost.com/politics/2025/07/21/trump-court-orders-defy-noncompliance-marshals-judges/>

⁸⁶ Rivard, K. C. and Gerstein, J.: "Another Trump clash with the courts is already spinning out into criminal cases", *Politico*, 28 July 2025, <https://www.politico.com/news/2025/07/28/alina-habbas-authority-as-new-jerseys-top-prosecutor-questioned-in-new-legal-filing-00480025>

Consumer Financial Protection Bureau, which the White House aimed to shrink dramatically. The ruling didn't immediately authorize firings but marked an appellate shift favoring executive power, criticized for weakening judicial checks⁸⁷.

Together, these events reveal converging pressures on judicial independence: escalating personal intimidation of judges; executive tactics undermining compliance with court orders; and structural maneuvers over personnel and agency design challenged in court with rhetoric framing judicial resistance as illegitimate. While no single episode proves a constitutional crisis, collectively they depict an environment where judicial authority and insulation face unusually direct challenges. These cases illustrate how the executive can exert undue pressure on the judiciary, not only through formal mechanisms but also via rhetoric, public messaging, threats, and resistance to obey judicial decisions. Such actions endanger judges' rights and the structural guarantees of judicial independence vital to democracy and the rule of law. This also leads to wondering what value judicial decisions have these days.

b. Examples in Europe

If we now turn to the EU, we can easily find examples of intimidation of judges in Poland and Spain, to name only two cases. In light of the judicial reforms implemented in Poland by the former government of the PiS (2015-2023), a serious cause for concern was the systematic campaign orchestrated by the executive branch against certain judges. These judges were especially targeted if they had protested their premature removal from office, publicly opposed arbitrary changes to the law, challenged the dismissal of their promotion applications through judicial review, or issued judicial decisions that the executive disliked⁸⁸. In this context, particular attention must be given to the case of the former spokesperson of the National Council of the Judiciary (NCJ), who endured a prolonged and exhausting campaign of prosecution and defamation as a result of the public statements he made in his official capacity⁸⁹. This strategy, which aimed to intimidate, discourage, and silence him -and to send a chilling message to

⁸⁷ Reuters: "US appeals court rejects states' lawsuit over Trump mass firings", 8 September 2025, <https://www.reuters.com/legal/government/us-appeals-court-rejects-states-lawsuit-over-trump-mass-firings-2025-09-08/>

⁸⁸ Sanz Caballero, S.: "*El Consejo Nacional de la Magistratura: actor en Polonia, repercusiones en Europa*", *Colección Ius Cogens*, Externado de Colombia, vol. 11, 2023, pp. 685-607.

⁸⁹ ECtHR: Judgment of June 16, 2022, *Żurek v. Poland*, App. No. 39650/18, paras. 48-92.

other judges—ultimately led to his removal from office. His statements consistently defended the independence of the judiciary and publicly denounced political interference, arguing that the reforms were incompatible with the principles of the rule of law. His aim was to inform the public about the abuses being committed, since according to the jurisprudence of the European Court of Human Rights judges have a professional duty to speak out in defence of the rule of law⁹⁰. This duty becomes even more significant when the speaker is acting on behalf of the national judicial council. Eventually, the NCJ spokesman presented himself an application against Poland before this Court. The European Court of Human Rights (ECtHR) was particularly firm in its judgment, strongly condemning the government's interference with the freedom of expression of someone whose specific role was to defend judicial independence and the separation of powers. The Court found that the judge's statements to the media, focused on the independence of the judiciary and the rule of law as fundamental values under threat in Poland, were not only made in a personal capacity but also, and primarily, in his role as spokesperson of the NCJ, and that they related to matters of public interest. As is to be expected, the ECtHR has shown heightened vigilance in ensuring protection for members of the judiciary against measures that threaten their independence and autonomy⁹¹.

In the case of Spain, although there are no final court rulings directly addressing the situation, there has been a sustained and politically motivated campaign by members of the executive branch targeting specific judges. These judges are primarily those investigating cases involving individuals within the inner circle of the Prime Minister, including close family members, former government officials, or prominent figures of the ruling party. Among the judges targeted are those investigating the possible conflicts of interest of the prime minister's wife (Juez Peinado), the seemingly illegal acquisition of a public position by the prime minister's brother (Jueza Biedma), and the supposed payoffs obtained from private companies by high political figures of the ruling party to secure government licenses (Juez Puente)⁹².

Other judges under political pressure are those handling cases related to the former President of the Generalitat of Catalonia and the illegal in-

⁹⁰ ECtHR: Judgment of June 23, 2016, *Baka v. Hungary*, App. no. 20261/12, para. 165.

⁹¹ Zurek, paras. 222 and 224.

⁹² Fernández Chillón, R.: "Sánchez, el Gobierno y el PSOE han lanzado más de 25 ataques frontales a los jueces esta legislatura" *El Debate*, 3 September 2025, https://www.eldiario.es/espaa/20250903/sanchez-gobierno-psoe-han-lanzado-25-ataques-frontales-jueces-esta-legislatura_330730.html

dependence referendum held in 2017, which led to charges of sedition, embezzlement, and disobedience. What makes the situation particularly concerning is that the support of the Catalan separatist parties, including the one led by the former president under investigation, is essential for the current government to remain in power. Against this backdrop, several executive officials and political allies have publicly discredited judicial decisions, questioned the impartiality of judges, and suggested reforms to reduce the judiciary's independence, including changes to the selection process of judges and prosecutors⁹³. Moreover, there has been a continued lack of implementation of judicial rulings mandating that Catalanian schools ensure instruction in the Spanish language. Parents and children who exercise their right to receive education in Spanish frequently become targets of harassment⁹⁴. This tactic, while not always explicit, has a chilling effect on the judiciary, especially when judges face the prospect that their rulings may simply be ignored by the state. In this particular case, the non-respect of the judicial decision goes against the children's rights to education and be free from any form of violence or intimidation.

This ongoing political narrative, marked by public accusations of “law-fare” and alleged judicial persecution, contributes to undermining public trust in the judiciary and creates a chilling effect among magistrates, especially those dealing with politically sensitive cases. While no institutional steps have yet been taken against individual judges, the consistent rhetoric coming from executive figures fosters an environment of pressure and delegitimization that poses a threat to judicial independence and the principle of separation of powers. These public attacks on the judiciary have serious consequences for democratic discourse. By repeatedly discrediting individual judges and suggesting that judicial decisions are politically motivated, members of the executive contribute to inflaming public debate and deepening political polarization. Most worryingly, such rhetoric has led to increasingly hostile attitudes from sectors of society closely aligned with the government, who often direct their frustration toward specific judges. Reports from judicial associations have noted that these judges feel harassed, intimidated, and unsupported, particularly when their professional integrity

⁹³ García Vázquez, C.: “La carrera judicial emplaza a Perelló a endurecer el tono contra el Gobierno por los ataques de Sánchez”, *VozPópuli*, 4 September 2025, <https://www.vozpopuli.com/tribunales/la-carrera-judicial-emplaza-a-perello-a-endurecer-el-tono-contra-el-gobierno-por-los-ataques-de-sanchez.html>

⁹⁴ Arenas García, R.: “Vehiculariedad del Castellano en la Escuela Catalana y Desobediencia”, *Fundación Hay Derecho*, 25 November 2021, <https://www.hayderecho.com/2021/11/25/vehiculariedad-del-castellano-en-la-escuela-catalana-y-desobediencia/>

is questioned in the media or in parliamentary discourse⁹⁵. This general erosion of respect for judicial decisions risks normalizing executive defiance of courts, undermines the personal safety and morale of those targeted, and also weakens public confidence in the judiciary as a neutral guarantor of rights and the rule of law. The abusive use of the resources to the freedom of expression by political leaders against judges, and/or the abuse of court lawsuits in vindictive, selective prosecutions against both opponents and judges perceived as inconvenient, erodes the pillars on which judicial independence and the rule of law are rooted. This situation, which undermines the judiciary's credibility in the eyes of citizens, stems from the belief held by some political leaders that the executive stands above the judicial branch, and that judges therefore have no authority to limit the power of the president or the government⁹⁶. But this continuously increasing rhetoric discrediting judicial work has consequences on human rights in terms of rights to access to a court, equality of all individuals before the law, the right to a fair trial, the right to a judge, the right to equality of arms, and the rights of defense, among others.

⁹⁵ To name but a few: Asociación profesional de la magistratura, Asociación judicial Francisco de Vitoria, Foro Judicial Independiente, Asociación de Fiscales, Asociación profesional e independiente de fiscales: Comunicado de la Mayoría de Asociaciones de Jueces y Fiscales sobre el señalamiento de jueces en sede parlamentaria, 13 December 2023, <https://www.ajfv.es/comunicado-de-la-mayoria-de-las-asociaciones-judiciales-y-fiscales/>; Asociación Francisco de Vitoria y Foro Judicial Independiente: Comunicado conjunto AJFV y FJI sobre la Proposición de Ley Orgánica de garantía y protección de los derechos fundamentales frente al acoso derivado de acciones judiciales abusivas, 14 January 2025; <https://www.ajfv.es/comunicado-conjunto-ajfv-y-fji-sobre-la-proposicion-de-ley-organica-de-garantia-y-proteccion-de-los-derechos-fundamentales-frente-al-acoso-derivado-de-acciones-judiciales-abusivas/>; Asociación jueces y juezas para la democracia. Comunicado Conjunto de las Asociaciones de Jueces y Fiscales sobre las declaraciones de María Jesús Montero, 31 March 2025. <https://www.juecesdemocracia.es/2025/03/31/comunicado-conjunto-de-las-aaj-jyff-sobre-las-declaraciones-de-maria-jesus-montero/>; Asociación profesional de la magistratura: Informe APM_ libertad de expresión de los jueces/as, La Proposición de Ley Orgánica de garantía y protección de los derechos fundamentales frente al acoso derivado de acciones judiciales abusivas, presentada por el Grupo Parlamentario Socialista, 25 February 2025, https://magistratura.es/informe-apm_-libertad-de-expresion-de-los-jueces-as-y-la-proposicion-de-ley-organica-de-garantia-y-proteccion-de-los-derechos-fundamentales-frente-al-acoso-derivado-de-acciones-judiciales-abusivas/

⁹⁶ *The Guardian*: Outrage after JD Vance claims judges are not allowed to check executive power, 10 February 2025. <https://www.theguardian.com/us-news/2025/feb/10/jd-vance-judges-trump>; *Político*: Hungary won't abide by EU court ruling on migration, Orbán says, 21 December 2021, <https://www.politico.eu/article/hungary-challenge-eu-court-ruling-migration-viktor-orban/>

IV. Conclusions

The analysis demonstrates the inseparable link between the rule of law and human rights, exemplified in judicial independence. Both in the United States and the European Union, these values are mutually reinforcing: the rule of law ensures that laws are applied fairly, consistently, and impartially, while the protection of human rights depends on an independent judiciary capable of upholding those laws. Historical and contemporary examples, from the U.S. Constitution, Bill of Rights, and Virginia Declaration of Rights to EU treaties, the ECHR, the Charter of Fundamental Rights, and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, show that legal systems have long recognized this interdependence.

Recent developments reveal that the erosion of judicial independence, whether through political interference, harassment of judges, or arbitrary use of pardons and amnesties, directly threatens the effective protection of human rights and the functioning of democracy. The cases documented in the United States, including unprecedented presidential pardons and executive actions undermining court orders, illustrate how executive overreach can compromise equality before the law and due process. In Europe, targeted harassment of judges in Poland and Spain, alongside selective amnesties and politically motivated campaigns against magistrates, demonstrates similar risks to judicial autonomy, public confidence, and the equitable application of justice.

The evidence underscores that judicial independence is not a privilege reserved for judges but a necessary safeguard for all citizens seeking fair treatment under the law. Any interference with the judiciary, whether overt or indirect, jeopardizes the broader democratic framework and diminishes the credibility of legal institutions. Consequently, the rule of law, human rights, and judicial independence emerge not merely as abstract principles but as practical pillars essential for the survival of democratic governance and the protection of individual and collective rights. Ultimately, the sustained protection of these core values requires vigilant adherence to legal norms, robust institutional safeguards, and a societal commitment to justice, equality, and accountability. Without these protections, both in the United States and the European Union, the promise of the rule of law and human rights remains vulnerable, highlighting the urgent need to reinforce the independence of the judiciary.

The judiciary is one of the state powers, but it is probably the most vulnerable of all, as it relies on the integrity of its own members and the respect of other state branches to function effectively, being subject to the other branches deciding on its reform. Judicial independence is not merely

a procedural formality; it is the cornerstone of human rights protection in any democracy. Without an impartial and autonomous judiciary, citizens cannot rely on courts to uphold equality before the law, ensure fair trials, or protect against abuses of power. In Western democracies, the independence of judges safeguards the rule of law, providing a necessary check on executive and legislative authority and guaranteeing that human rights are not subject to political whims. When judicial independence is compromised or the judicial system is captured, the very foundations of liberty, justice, and accountability are eroded, leaving societies vulnerable to arbitrary governance and the systematic violation of individual and collective rights. As a result, protecting the judiciary is tantamount to protecting democracy itself and the human rights it is designed to safeguard. Judges interpret and apply the law, and to do so with integrity -independently, impartially, and fairly- they must be free from both external and internal interference. The United States and the European Union must ensure that judicial independence is upheld. Failure to do so undermines the entire constitutional system, weakens institutional guardrails, and sets off a cascade of consequences, including impunity, inequality, corruption, and discrimination, ultimately eroding the very foundations of democracy.

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