

Il coraggio che serve all'Europa – The Courage that Europe Needs

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Article

ABSTRACT

Free translation from Italian into English by Francesco de Angelis and Indira Tie from an article written by Professor Sabino Cassese. With its recent decision of 20 December 2017, the European Union – the most ingenious political construction of the 20th century – reminded Poland that common values have to be respected. Since it is the first time in the history of the Union that this has ever happened, this event deserves reflection.

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Free translation from Italian into English by Francesco de Angelis and Indira Tie¹

With its recent decision of 20 December 2017, the European Union – the most ingenious political construction of the 20th century – reminded Poland that common values have to be respected. Since it is the first time in the history of the Union that this has ever happened, this event deserves reflection.

Let us first look at the nature of the dispute between Poland and the Union. In the Treaty, it is laid down that human dignity, freedom, democracy, equality, rule of law, and respect for human rights are the foundation of the European Union. These values are deeply rooted in supranational principles but also in common constitutional traditions and in the common history of the European States.

Poland, however, appears to be taking a different path. The country has approved 13 laws that foresee systematic interference with legislative and executive powers in the composition, management, and functioning of the judicial courts.

The European Commission has not remained silent; during the past two years, it entered into a dialogue with the Polish government, explaining why the latter is acting wrongly. During this period, the Commission issued one opinion and three “recommendations,” now followed by a fourth one. It exchanged 25 letters with the Polish authorities and organized several meetings. In other words, the Commission followed a preventive procedure of warnings and then issued a formal warning. Now, after the failure of this last procedure, the Commission has launched a far more consequential one.

This so-called “Article 7-procedure” is laid down in the Treaty on European Union. It involves the identification of a clear risk of serious breach of the Union’s common values and can be followed by sanctioning procedures consisting in the suppression of certain rights which Poland derives from being a member of the Union (for instance: the right to vote). By initiating this procedure for the first time, the European Commission draws attention to the fact that respect for some common basic rules is a problem concerning *all* the countries of the Union: common trust, the functioning of the single market, cooperation in home and justice affairs, mutual recognition, the European arrest warrant, etc.

The procedure proceeds now with all the precautions established in the Treaty (in particular: hearing Poland, deliberation in the Council, and approval by the European Parliament). It represents an important step forward. What was considered interference into the internal affairs of a sovereign State by authorities of other Member States in the past, now – for the first time – takes on an entirely different meaning. The Union has the role of a guardian of the respect for common rules in areas left to the legislation of individual countries in the past (freedom, democracy, independence of the judiciary). The individual governments, for their part, have the obligation to respond not only to their national electors but also to an “assembly of the condominium,” which insists on respect of the common rules (the values enumerated in Art. 2 of the Treaty on European Union). The great jurist, *Guido Calabresi*, was right in saying that the European Union is, in a certain way, more unified than the United States (sometimes put forward as model to be followed), precisely *because* of its common values. One example is the death penalty, which some American states still apply, while the States of the Union unanimously abandoned it.

This Europe, which we complain about daily, has given us not only half a century of freedom (in comparison with millions of deaths and vast destruction during the first half of the past century) but also a construction that shows prudence and courage. The Commission acted prudently when it tenaciously engaged in a dia-

logue with the obstinate and illiberal Poland for two years. It has now shown courage in taking action and putting Poland under accusation.

1. The article was originally published in "Corriere della Sera" on 27 December 2017. Original title: "Il coraggio che serve all'Europa." We thank Professor Cassese for his consent to the publication of this translation in eucrim. Prof. Sabino Cassese is professor of administrative law and a former judge of the Constitutional Court of Italy.↵

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