

ENCOURAGING COOPERATION WITH COMMON UNDERSTANDING: HOW THE EU AND MERCOSUR DEFINE THE RULE OF LAW?

INCENTIVANDO A COOPERAÇÃO COM UM ENTENDIMENTO COMUM: COMO A UE E O MERCOSUL DEFINEM O ESTADO DE DIREITO?

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ABSTRACT: The paper refers to a comparative analysis of the rule of law in the European Union (EU) and the Southern Common Market (Mercosur) region. This research focuses on how both entities define and apply the rule of law to better understand how they foster a fruitful interregional dialogue. The EU and Mercosur have been trying to agree for two decades now, and they are still discussing it. At this stage, the main attention on this agreement concerns trade, but they also want to incentivise political dialogue. This research aims to encourage this dialogue starting from a mutual understanding of the values at the basis of the two regions. The main question is: how do the EU and Mercosur define and employ the rule of law? The first section will analyse the concept of the rule of law embedded in the EU norms and the different approaches adopted by Mercosur's legal framework. Successively, the second section will underline how the EU and Mercosur can enforce the rule of law through Art. 7 Treaty of the European Union or through Protocolo of Ushuaia in Mercosur. The study will conclude by underlining the regional rule of law backlash that both the EU and Mercosur are now experiencing. The ultimate purpose is to provide the two regional institutions with the tool of mutual knowledge to start an effective interregional dialogue.

Keywords: rule of law; comparative regionalism; EU-Mercosur; cooperation; fundamental rights

RESUMO: O artigo refere-se a uma análise comparativa do Estado de Direito na União Europeia (UE) e na região do Mercado Comum do Sul (Mercosul). Essa pesquisa se concentra em como ambas as entidades definem e aplicam o estado de direito, para entender melhor como elas promovem um diálogo inter-regional frutífero. A UE e o Mercosul vêm tentando chegar a um acordo há duas décadas e ainda estão discutindo o assunto. No momento, a principal atenção desse acordo diz respeito ao comércio, mas eles também querem incentivar o diálogo político. Esta pesquisa tem como objetivo incentivar esse diálogo a partir de uma compreensão mútua dos valores que constituem a base das duas regiões. A questão principal é: como a UE e o Mercosul definem e empregam o Estado de Direito? A primeira seção analisará o conceito de Estado de Direito incorporado nas normas da UE e as diferentes abordagens adotadas pela estrutura jurídica do Mercosul. Em seguida, a segunda seção destacará como a UE e o Mercosul podem aplicar o Estado de Direito por meio do Art. 7 do Tratado da União Europeia ou por meio do Protocolo de Ushuaia no Mercosul. O estudo será concluído destacando o retrocesso do Estado de Direito regional que a UE e o Mercosul estão enfrentando atualmente. O objetivo final é fornecer às duas instituições regionais a ferramenta de conhecimento mútuo para iniciar um diálogo inter-regional eficaz.

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Palavras-Chave: estado de direito; regionalismo comparativo; UE-Mercosul; cooperação; direitos fundamentais

INTRODUCTION: IT'S TIME FOR THE EU AND MERCOSUR TO DIALOGUE EFFECTIVELY.

‘Latin America has always been the junior partner – this is how mostly Latin America feel in the relationship [with the EU]’.²

This paper mobilises a comparative analysis of the EU and Mercosur concerning the role of the rule of law in their regional realms. The study aims to unpack two regions that have been trying to formalise a trade (and not only) agreement for too long. The introductory statement, made by the Brazilian Ambassador to Argentina, expresses the general resentment and frustration around the EU interregional dialogue. This research aspires to provide tools to overcome this situation of frustration and immobility to make progress in interregional dialogue instead. To avoid treating Latin America as the ‘junior partner’, one should learn how the ‘share of values’ of the EU and Mercosur is real and not only an abstract sentence.

The EU and Mercosur are two regions, and they have been pursuing an interregional dialogue for almost three decades now. In 1995, they signed the Interregional Framework Agreement (IFCA), ‘considering the deep historical, cultural, political and economic links which unite them and taking inspiration from the values shared by their people’³. This was the first step for an EU-Mercosur Association Agreement (AA) on trade and political cooperation. After two decades, the agreement is still under negotiation for several reasons: differences in legislation and perceptions, especially concerning social rights and the environment.⁴ In addition, despite the broad recognition and cooperation between the EU and Mercosur, according to the text of the IFCA, this does not help in practice to develop a coherent agenda for the implementation of political cooperation. In this respect, the political cooperation section of the agreement is not even close to being negotiated.⁵ However, the EU and Mercosur can

²Mauricio Favero, Ambassador of the Federative Republic of Brazil to Argentina during International Conference in FLACSO Argentina Latin America and the EU in global reordering 16th September 2024.

³ Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part - Joint Declaration on political dialogue between the European Union and Mercosur. Preamble, §1.

⁴ -EUROPEAN PARLIAMENT. DIRECTORATE GENERAL FOR EXTERNAL POLICIES OF THE UNION., **Assessing the political dialogue and cooperation pillar of the EU-Mercosur association agreement: towards a bi regional strategic partnership? : in depth analysis.**, LU: Publications Office, 2022. P.6-7.

⁵ *Ibid.* P. 7.

have a common understanding despite their different institutional frameworks, as will be explained in the following pages through comparative regionalism.

Comparative regionalism has grown through the years raised by several scholars, and it helps to understand the differences between the regions trying to expand the Eurocentric view of the world. The preferred approach is to engage several areas of studies trying to improve ‘continued cross-fertilisation between regional debates and specialisations.’⁶

‘Regions can and should be compared in time as well as within and across different spaces and forms of organisation. It is thus possible to compare the comprehensive and multidimensional regions at various scales (macro, meso, micro) but also to compare more distinct types of regions and regionalism, such as trade blocs, security regions, cognitive regions, river basins, and so forth.’⁷

The research will employ comparative regionalism, unpacking the rule of law in the EU and Mercosur, starting from the normative dimension (I) to then analyse its enforcement (II).

I. THE *NORMATIVE* DIMENSION OF THE RULE OF LAW: FOUNDING REGIONS AROUND THE RULE OF LAW.

‘The rule of law as a concept refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.’⁸

The international understanding of the rule of law is intertwined with the necessity of maintaining peace among Member States⁹. In this concern, in the 9241st meeting of the UN

⁶ Söderbaum, Fredrik. “Old, New, and Comparative Regionalism: The History and Scholarly Development of the Field,” *The Oxford Handbook of Comparative Regionalism*. The Oxford Handbook of Comparative Regionalism. First edition. Oxford Handbooks. Oxford, United Kingdom: Oxford University Press, 2016. pp. Chapter 2 pp. 1-28, p. 22.

⁷ Söderbaum, Fredrik. “Old, New, and Comparative Regionalism: The History and Scholarly Development of the Field,” pp. 21-28 in *Oxford Handbook of Comparative Regionalism* *supra note* 11, p. 23.

⁸ The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, Report of the Secretary-General, Doc. S/2004/616 of 23 August 2004.

⁹ Security Council Seventy-eighth year 9241st meeting Thursday, 12 January 2023, 10 a.m. New York, The rule of law is foundational to the United Nations and to our mission of peace; the Security Council has a vital role in upholding it. P. 3

Security Council held in New York in January 2023, Oxford Professor Akande affirmed: ‘In many of our national societies, we aspire to observance of the rule of law. While there are many ideas as to what precisely the rule of law means, at least one thing is clear: the rule of law requires that those who exercise public power must act by the law. That, in turn, means that all those who are the subjects of the law are entitled to the protection of the law.’¹⁰ He affirmed that States are the first responsible for maintaining peace and preserving the rule of law; on this, the Brazilian representative also asserted that: ‘The rule of law among nations is the basis for the successful pursuit of the goal of maintaining international peace and security’.¹¹ In summary, respect for the rule of law is internationally recognised, if not enforceable, at least abstractly affirmed and shared by members and European and Latin American countries. The Assembly points out the *national* responsibility and operationalisation of the rule of law. Nowadays (seeing the internationalisation of the concept as well), talking only about domestic understanding of the rule of law would be anachronistic. Globalisation led to approximate countries - there is not a national understanding but a global or regional one.¹² Thus, scholars but also governments of the States refer to *regions*, groups of countries and not States¹³. That is why the analysis will refer to the EU and Mercosur, a group of countries sharing cultures (sometimes languages) and a regional framework.

The paper will discuss the concept of the rule of law conceived as the **thick** rule of law: a principle of governance in which there is also substantive justice and respect and enforcement of human rights. Many scholars interpreted the rule of law as the rule of the *just* law: ‘Just Laws [means that]the laws are clear, publicised, stable, and just; are applied evenly; and (they) protect fundamental rights, including the security of persons, contract and property rights, and certain core human rights.’¹⁴ Therefore, in this analysis, the reader must understand the rule of law as a principle of regional governance encompassing democracy and human rights.

Regional waves post-Second World War had to pass through the promotion of the rule of law and democracy. Regional integration is strictly intertwined with the promotion of democratic values because the latter guarantees better political stability and a higher will to

¹⁰ *Ibidem*.

¹¹ *Ibidem* P. 7

¹²E. SOLINGEN, J.MALNIGHT, ‘GLOBALIZATION, DOMESTIC POLITICS, AND REGIONALISM’ IN (ED. BY) TANJA A BÖRZEL AND THOMAS RISSE, *OXFORD HANDBOOK OF COMPARATIVE REGIONALISM* OXFORD UNIVERSITY PRESS, 2016.

¹³ On regional studies there are several authors, the paper took information from Borzel, Risse, *Oxford Handbook of Comparative Regionalism...*; MEYER, Thomas; DE SALES MARQUES, José Luís; TELÒ, Mario, **Regionalism and Multilateralism: Politics, Economics, Culture**, [s.l.]: Routledge, 2020.

¹⁴ STEIN, Robert, What Exactly Is the Rule of Law?, **HOUSTON LAW REVIEW**, p. 18, 2019., p. 193.

open to other countries.¹⁵ Both the EU and Mercosur were born as an economic union, and both needed the affirmation of common regional values. Trade liberalisation goes with democracy implementation because the market is more stable if there is stable governance. In this spirit, at the regional level, if you want to implement and ameliorate the market,¹⁶ you must consider the promotion and the protection of democracy – which is strongly interconnected with the rule of law and fundamental rights. Common sense of belonging, a converging perception of external threats and opportunities, and ideas relating to common identities were increasingly critical in underpinning national cooperation policies, constructing regionalism and influencing regional institutionalisation.¹⁷ On this, academics were very critical, affirming that ‘an economic integration that does not take human rights into account will not succeed, either by internal reaction (of the constitutional courts of the states involved)’.¹⁸

The term ‘rule of law’ has been embedded in the European legal framework¹⁹, and it has received wide analysis from European scholars²⁰, who still discuss the complexity of the concept.²¹ On the other side, Latin American academia has examined the concept of the rule of law, starting from the fact that the rule of law is related to the promotion and protection of democracy and fundamental rights – a substantial dimension²². The substantial dimension concerns how the rule of law manifests out of its abstract conceptualisation because there is also the need to guarantee the norm concretely, and this happens with the affirmation of democratic values. Both the EU and Mercosur affirmed (with different approaches) the rule of law as a regional norm, framing it as a condition for the membership of the EU and Mercosur. However, the EU regulate the concept of the rule of law, whilst Mercosur refers to **democracy/democratic values**. This section aims at unpacking the normative dimension of the

¹⁵ STEVES, F., Regional Integration and Democratic Consolidation in the Southern Cone of Latin America, **Democratization**, v. 8, n. 3, p. 75–100, 2001. P. 89 and p. 92.

¹⁶ VAN DER VLEUTEN, Anna; HOFFMANN, Andrea Ribeiro, Explaining the Enforcement of Democracy by Regional Organizations: Comparing EU, Mercosur and SADC, **JCMS: Journal of Common Market Studies**, v. 48, n. 3, p. 737–758, 2010.

¹⁷ TELÒ, Mario, **Multilateralism Past, Present and Future: A European Perspective**, [s.l.]: Routledge, 2023. p. 171.

¹⁸ RAMOS, André De Carvalho, Derechos humanos y el mecanismo híbrido del MERCOSUR: ¿Cómo controlar la aplicación de la cláusula democrática?, **Rev. secr. Trib. perm. revis.**, v. 3, n. 6, p. 48–68, 2015., p.50.

¹⁹ Preamble, Art. 2 TEU, Art. 21 TEU, Art. 263 TFEU, Preamble of the Charter and several protocols.

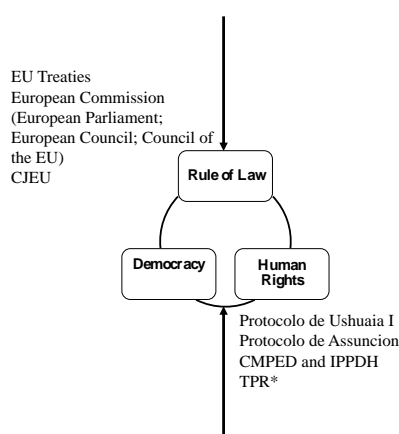
²⁰ COMAN, Ramona, Strengthening the Rule of Law at the Supranational Level: The Rise and Consolidation of a European Network, **Journal of Contemporary European Studies**, v. 24, n. 1, p. 171–188, 2016. p. 171.

²¹ STEIN, What Exactly Is the Rule of Law? “Although the concept of the rule of law can be traced back at least to ancient Greece, it has become much more widely discussed in the last twenty-five years.” p. 187.

²² CYRILLO, Carolina; FUENTES-CONTRERAS, Édgar Hérnan; LEGALE, Siddharta, The Inter-American Rule of Law in South American constitutionalism, **Seqüência Estudos Jurídicos e Políticos**, v. 42, n. 88, p. 1–27, 2021.

rule of law in the two regions. *Table 1* illustrates that it seems that the EU has a top-bottom approach, starting from the regulation of the concept of the rule of law. On the other side, the Mercosur region starts from a bottom-up approach, trying to preserve the substance (democracy) to then achieve the rule of law. There is no good or bad approach; the core of comparison is to explain the reality how it is, enriching the analysis thanks to the two actors with whom it is possible to comprehend the issue better²³.

Table 1



A. The rule of law in the EU Treaties: the foundational value

The rule of law stands as a foundational pillar in the governance of modern European societies, serving as a cornerstone of democratic values and the safeguarding of fundamental rights. The European region is a model in the field of the protection of the rule of law and human rights²⁴.

Art. 2 TEU is the first primary source declaring the values on which the EU stands²⁵, among them the rule of law²⁶. The EU rule of law must be promoted and protected as a principle *per se*: it is a *norm* to establish good governance. Regional good governance. Setting up basic values for its Member States was the first step to guarantee peace after the two World Wars

²³ KESTEMONT, LINA, **Handbook on Legal Methodology**, Cambridge: Intersentia, 2018. pp. 36-54

²⁴ See LALUMIÈRE, Catherine, Quelques réflexions à propos du 70ème anniversaire de la Convention européenne des droits de l'homme, **Revue québécoise de droit international**, p. 53–68, 2021. p. 56.

²⁵ BÁRD, Petra, Canaries in a coal mine: Rule of law deficiencies and mutual trust, **Pravni zapisi**, v. 12, n. 2, p. 371–395, 2021. p. 371. Art. 2 TEU: 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.

²⁶ Levrat, N. (2019). Articulating Evolutionary Interpretation and the Rule of Law : The EU as a Composite Legal Order Based on Relative Rules of Law. in ABI-SAAB, Georges *et al* (Orgs.), **Evolutionary interpretation and international law**, Oxford, UK ; Chicago, Illinois: Hart Publishing, 2019., 313-337. p. 318.

(and during the Cold War). Furthermore, the concept of the rule of law in the EU served and serves to build trust – mutual trust – between the EU Member States²⁷: the EU needs to set common minimum standards within its Member States to build up more efficient cooperation. The process of implementation and protection of the rule of law is not ended since there should be constant improvement and amelioration. At the same time, nowadays, the EU is suffering mounting dissensus over liberal democracy: the rise of far-right movements and populist ideas is threatening the apparatus of civil and social rights built over 65 years.²⁸

The EU was born as an economic union in 1950 with the European Community of Coal and Steel. In 1957, they signed another international Treaty of the European Economic Community (EEC), establishing the gradual creation of the common market and developing the freedom of movement of goods, people, and services. In 1963, the European Court of Justice, with the judgment of *Van Gend and Loos*, established the principle of primacy of the EU legal order; in that specific case, it was aimed at affirming custom unions and then the internal market.²⁹ In 1986, the Court of Justice affirmed that the European Community is a community based on the rule of law (*see below §II.C*).³⁰ Following the fall of the Berlin Wall, the rule of law was quickly embraced as one of the key principles which should guide countries as well as international organisations in the post-Cold War era³¹. Indeed, with the Maastricht Treaty in 1993, ‘the EU Member States decided to insert not one but multiple references to the rule of law.’³² Thus, the Member States confirm ‘their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law’.³³ There was a more significant development with Amsterdam because the rule of law became the EU’s foundational principle, and then in 2000, with the Nice Charter³⁴, they tried to create an EU Constitution (without success), and the EU institution formally proclaimed the charter of

²⁷ BÁRD, Canaries in a coal mine., “Rule of law decline, including violations of judicial independence have a particular effect on the relation between judges at the various levels of the EU’s system of multi-level constitutionalism, especially on the cooperation between domestic courts in the area of freedom, security and justice (hereinafter: AFSJ).” p. 378.

²⁸ SCHEPPELE, Kim Lane; PECH, Laurent, What is Rule of Law Backsliding?, *Verfassungsblog*, 2018.

²⁹ NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. The EU has the power to promulgate legal acts that are *directly* applicable in all Member States and national judges are bound by the EU norms.

³⁰ Parti écologiste “Les Verts” v European Parliament. – see §II.C.1.

³¹ PECH, Laurent, The Rule of Law, *in*: CRAIG, Paul; DE BÚRCA, Gráinne (Orgs.), **The Evolution of EU Law**, [s.l.]: Oxford University Press, 2021, p. 0. p. 313

³² *Ibidem*, p. 314.

³³ Preamble Treaty on European Union, *OJ C 191*, 29.7.1992, p. 1–112 (ES, DA, DE, EL, EN, FR, GA, IT, NL, PT)

³⁴ Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts *OJ C 80*, 10.3.2001, p. 1–87 (ES, DA, DE, EL, EN, FR, GA, IT, NL, PT, FI, SV)

the EU fundamental rights. Finally, the following paragraphs will introduce the Treaty of Lisbon. As seen, the EU's path towards community and not intergovernmental approach was impacted by the strengthening of the rule of law's rules to the EU's MSs. This led to the operationalisation of the rule of law as a norm.

The normativity of the rule of law is enshrined in the Treaty of Lisbon. The EU is no longer an intergovernmental organisation, and this requires stronger and more efficient protection and promulgation of the rule of law. The main legal bases formalising the rule of law are Art. 2, art. 6, Art. 7, Art. 21 and Art. 49 of the TEU, etc³⁵. It is not possible to frame them all, so the following paragraph will focus on Art. 2 TEU and Art. 6 TEU, respectively, the article providing for the constitutional values of the EU.

1. *The EU's 'homogeneity clause'*

The Treaty of Lisbon recalls the respect of the values enshrined in Art. 2 TEU several times.³⁶ 'Article 2 TEU is sometimes referred to as a 'homogeneity clause'³⁷. The provision is not descriptive but prescriptive³⁸, meaning that it obliges MSs to be compliant with the EU values. Some legal scholars acknowledged that the principles embedded in Art. 2 do not state specific rights or duties, yet they are concretised by the legislative, the executive and the judiciary.³⁹ Despite the widening meaning, one cannot deny the constitutional nature of Art. 2 and, therefore, the legal status of the rule of law – it is a binding norm. In this context, Schroeder affirmed that 'the Union (...) presupposes them [the EU values] as societal values', thus, they impose on the MSs and their citizens.⁴⁰ Indeed, from Art. 2, it emerges that Member States agree to share with all the others a set of common values.

2. *Affirming fundamental rights in the EU: their regulation in the Treaties*

The rule of law and fundamental rights are intertwined – they serve one another. Article 6 TEU affirms the inclusion of the EU Charter of Fundamental Rights as primary law.

³⁵ They do not refer to the term rule of law but some of them relate to the EU values, fundamental rights and democracy: all components of the rule of law.

³⁶ Art.2; Art. 6; Art. 19-21; Art. 49.

³⁷ von Bogdandy, Armin, Piotr Bogdanowicz, Iris Canor, Christoph Grabenwarter, Maciej Taborowski, and Matthias Schmidt., **Defending Checks and Balances in EU Member States**, [s.l.]: Springer Nature, 2021., p. 109.

³⁸ BLANKE, Hermann-Josef; MANGIAMELI, Stelio (Orgs.), **The European Union after Lisbon**, Berlin, Heidelberg: Springer Berlin Heidelberg, 2012.p. 14

³⁹ **Defending Checks and Balances in EU Member States**.p. 111.

⁴⁰ *Ibidem*, p. 112.

According to Art. 6 TEU, ‘in the Lisbon Treaty, the Charter does not become part of the treaty, that is, a part of the text itself.’⁴¹ Art. 6§1 TEU expresses the *substantial* dimension of the rule of law, meaning its capability of protecting and preserving fundamental rights. In this spirit, the preamble of the Charter of Fundamental Rights underlines that the Union is based on the principles of democracy and the rule of law⁴². After this, the Charter ‘confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States⁴³’.

B. Mercosur: a pragmatic approach

The upcoming pages will explore the concept of the rule of law in the Mercosur region, considering its path towards regional integration⁴⁴. Mercosur is a *sub-region*⁴⁵ of the Organisation of American States, it comprehends four effective members, Argentina, Brazil, Paraguay, and Uruguay; Venezuela accessed the regional organisation in 2012, but it was suspended in 2017⁴⁶, due to its non-democratic situation. In 2023, Bolivia completed the process of accession, and it will be fully integrated, according to the Protocol of Accession of Bolivia, in 2027⁴⁷. Chile, Colombia, Ecuador, Guyana, Peru, and Suriname are *associated* States.⁴⁸ Mercosur was created with the Treaty of Asunción in 1991; it is an intergovernmental

⁴¹ BLANKE; MANGIAMELI (Orgs.), *The European Union after Lisbon*. p. 296.

⁴² Charter of Fundamental Rights of the European Union (2000/C 364/01).

⁴³ BLANKE; MANGIAMELI (Orgs.), *The European Union after Lisbon*. p. 167.

⁴⁴ John AE Vervaele, “Mercosur and regional integration in South America,” *International & Comparative Law Quarterly* 54, no. 2 (April 2005): 387–410, <https://doi.org/10.1093/iclq/lei007>.

“Mercosur is based on an international treaty establishing intergovernmental institutions and laying down objectives which all sound quite familiar: the realization of a customs union and a common market, linked to the four freedoms. It also has common policy areas and the accompanying harmonization. As such it is an intergovernmental structure with a community integration project in mind; in short, quite definitely not limited to a free trade association.” p. 390.

⁴⁵ Because all Mercosur Member States are also members of OAS and the process of democratization of OAS influenced Mercosur’s countries as well. On the Inter American System of Human Rights *see* CYRILLO; FUENTES-CONTRERAS; LEGALE, *The Inter-American Rule of Law in South American constitutionalism*.

⁴⁶ Decisión sobre la suspensión de Venezuela en el MERCOSUR. On this point, I will go back later in these pages since it is emblematic to explain Mercosur’s rule of law.

⁴⁷ In 2015, Mercosur Member States agreed on the Protocol of the Accession of Bolivia. They stipulated that Bolivia would become a full member four years after the ratification of the protocol. Since the protocol was ratified in December 2023, Bolivia is expected to be a full member of Mercosur by 2027 *see* Promulga o Protocolo de Adesão do Estado Plurinacional da Bolívia ao Mercosul, firmado em Brasília, em 17 de julho de 2015. ARTIGO 3º - O Estado Plurinacional da Bolívia adotará, gradualmente, o acervo normativo vigente do MERCOSUL, no mais tardar em quatro (4) anos contados a partir da data de entrada em vigência do presente instrumento. Para tanto, o Grupo de Trabalho criado no Artigo 12 deste Protocolo estabelecerá o cronograma de adoção da referida normativa.

⁴⁸ <https://www.mercosur.int/en/about-mercursosur/mercursosur-countries/>

organisation with economic purposes.⁴⁹ The main idea was to create a customs union allowing the free movement of goods; then, from the market policy, it started going towards regional integration. After the Treaty of Asunción, Mercosur founders signed the Treaty of Ouro Preto in 1994, establishing the institutional structure of Mercosur⁵⁰.

This integration process can be compared to a hiccup. In 30 years of Mercosur's creation, its Member States have not been consistent in enhancing the regional community because internal policy situations paralysed Mercosur's decisions several times⁵¹. However, during periods of heightened integration aspirations, Mercosur recognised the necessity of fostering not just a customs union but also common values. Consequently, we assist to a puzzling legal framework that did not regulate the concept of the rule of law *per se*. In this spirit, the concept does not appear in the Treaty of Asunción, nor the Treaty of Ouro Preto. On the contrary, the first declaration (political, not legal) on this arrived in 1992, the so-called Declaration of *Las Lenas*, in the form of a joint communication by the Presidents of Mercosur States: 'The Presidents reaffirmed that the full validity of democratic institutions is an indispensable prerequisite for the existence and development of MERCOSUR'⁵².

1. *Simple legal framework to promote democracy in Mercosur*

On one side, Mercosur countries wanted to first establish a customs union to better be part of the world economy, on the other side, there was an idea of improving regional cooperation to strengthen relations within the countries of the South Market. The will to promote democracy in the region was encouraged by the strongest country (economically), Brazil, which proposed 'to adopt norms or political declarations that can generate legal and

⁴⁹ TRATADO PARA A CONSTITUIÇÃO DE UM MERCADO COMUM ENTRE A REPUBLICA ARGENTINA, A REPUBLICA FEDERATIVA DO BRASIL, A REPUBLICA DO PARAGUAI E A REPUBLICA ORIENTAL DO URUGUAI Art. 1 A livre circulação de bens serviços e fatores produtivos entre os países, através, entre outros, da eliminação dos direitos alfandegários e restrições não-tarifárias á circulação de mercadorias e de qualquer outra medida de efeito equivalente; O estabelecimento de uma tarifa externa comum e a adoção de uma política comercial comum em relação a terceiros Estados ou agrupamentos de Estados e a coordenação de posições em foros econômico-comerciais regionais e internacionais; A coordenação de políticas macroeconômicas e setoriais entre os Estados Partes - de comércio exterior, agrícola, industrial, fiscal, monetária, cambial e de capitais, de serviços, alfandegária, de transportes e comunicações e outras que se acordem, a fim de assegurar condições adequadas de concorrência entre os Estados Partes; e O compromisso dos Estados Partes de harmonizar suas legislações, nas áreas pertinentes, para lograr o fortalecimento do processo de integração.

⁵⁰ Protocolo de Ouro Preto. CMC 1994.

⁵¹ BIANCULLI, Andrea C., Politicization and Regional Integration in Latin America: Implications for EU-MERCOSUR Negotiations?, **Politics and Governance**, v. 8, n. 1, p. 254-265, 2020. P. 254.255.

⁵² "Comunicado de Las Leñas -27 de Junio de 1992-," accessed April 4, 2024, https://www.iri.edu.ar/revistas/revista_dvd/revistas/R3/R3DOC07.html.

political consequences for countries that stray from democratic standards.’⁵³. All governments were aware that the constitution of a common market had to pass by the assumption of the continuity of democratic regimes everywhere.⁵⁴ Therefore, the declaration of *Las Lenas* (above mentioned) aimed at implementing the political development of the region⁵⁵. Mercosur realised how the commitment to democracy and membership was a condition to progress together⁵⁶. From this, in the second half of the 90s, the region concluded a new declaration and signed new agreements on preserving democracy⁵⁷. In this regard, after the declaration of *Las Lenas*, Mercosur approved other instruments to improve the rule of law. First, in 1998 they approved the Protocol of Ushuaia I (*see* below §II.A.) on the MSs’ obligation to respect democratic values. Then, in 2005 they agreed on the Protocol of Asuncion on Fundamental rights. In 2011, Mercosur tried to develop the Protocol of Ushuaia I with a second version, never entered into force. From that period on, there were no more declarations on this. There can be two conclusions: there is a general impasse in the region, which leads to the static situation even concerning the production of the law; however, some interviewees made observations concerning the implicit affirmation and protection of fundamental rights in Mercosur due to the affirmation of the ACHR, but also the concrete affirmation of the democratic values in every initial statement of Mercosur’s meeting⁵⁸.

2. *Mercosur’s legal framework for fundamental rights*

In 2005, Mercosur established the Protocol for the Protection and Promotion of Human Rights in Mercosur, also called the *Protocol of Asuncion*. Art. 2 of this Protocol cites: ‘The Parties cooperate mutually to promote and protect effectively human rights and fundamental freedoms through institutional mechanisms established by Mercosur.’⁵⁹ The text consists of a mechanism of cooperation in case of systematic violation of fundamental rights.⁶⁰ it states the

⁵³ Otávio A. D. Caçado Trindade, A CLÁUSULA DEMOCRÁTICA DO MERCOSUL: ASPECTOS JURÍDICOS DO ARGUMENTO DIPLOMÁTICO, Curso de Alto Estudo, UNDAÇÃO ALEXANDRE DE GUSMÃO, P. 70.

⁵⁴ DE ALMEIDA, Paulo Roberto, Regional integration in Latin America: historical developments, current challenges, especially in Mercosur, *Meridiano* 47, 2018, p. 11.

⁵⁵ FUCCILLE, Alexandre; LUCIANO, Bruno Theodoro; BRESSAN, Regiane Nitsch, PARA ALÉM DO COMÉRCIO: MERCOSUL, DEMOCRACIA E SEGURANÇA REGIONAL, *Lua Nova: Revista de Cultura e Política*, p. 217–250, 2021. P. 226.

⁵⁶ STEVES, Regional Integration and Democratic Consolidation in the Southern Cone of Latin America. p. 92.

⁵⁷ FUCCILLE; LUCIANO; BRESSAN, PARA ALÉM DO COMÉRCIO. P. 226. This part will be developed further in §A.

⁵⁸ _____, Interviewee 29.05.24, *online*.

⁵⁹ MERCOSUR CMC/DEC 17/05.

⁶⁰ p.163.

need to promote consultation in case of violation (Art. 3); if the consultation is ineffective the States can decide to apply provisional measures (Art. 4). The measures will consist in the *suspension of rights and obligations arising from the integration process*.⁶¹

Despite the ambition of the Protocol, one must criticise two points. First, there is the question of what human rights the Protocol addresses. Theoretically, the substantial conception of the rule of law⁶² comprehends all the rights of individuals, going from personal rights to fundamental freedoms. However, most of the time, you have a specific list to refer to: usually, the regional organisations providing a mechanism for the protection of human rights have also approved a Convention on Human Rights. As said, 'in the void of the legislator, one must underline that all Mercosur's members signed the American Convention on Human Rights'⁶³. Therefore, this void could be filled with the OAS-Mercosur integration complementarity. In addition, one cannot forget the national constitutions of Mercosur Member States: they all provide for the affirmation and protection of human dignity and human rights⁶⁴. In this respect, the preamble of the Protocol for the Protection and Promotion of Human Rights in Mercosur recalls the Declaration of *Las Lenas*, the Ushuaia Protocol I, the American Declaration of the Rights and the Duty of the Man and the ACHR, plus the UN program and the Universal Declaration of Fundamental Rights. Nevertheless, the content of the Protocol is 'shy', and it should be improved to achieve a higher degree of integration.⁶⁵

Another point of criticism is related to the absence of individual protection in case of violation of fundamental rights. If the protocol gives *normativity* to the regional preservation of fundamental rights, it talks about the 'systematic violation of human rights', referring, logically, to the dictatorships' background. However, the rule of law is also breached when the state fails to enact adequate laws to safeguard individuals' rights, even if the violations are not on a large scale⁶⁶.

II. THE RULE OF LAW'S ENFORCEMENT IN THE EU AND MERCOSUR

In this section, "**enforcement**" refers to instruments used to uphold the rule of law in concrete terms. Being part of a regional organisation means having rights and duties, and the

⁶¹ An interesting analysis from: *Ibid.* pp. 163-164.

⁶² *See* § 9.

⁶³ RAMOS, Derechos humanos y el mecanismo híbrido del MERCOSUR. p. 52 'La protección de los derechos humanos en los países miembros debe limitarse a los mecanismos internacionales de derechos humanos específicos, a la vez que "(...) en el MERCOSUR, cuyos miembros y asociados son parte del sistema interamericano, no cabría, en mi opinión, duplicar el marco legal y procesal'

⁶⁴ *Ibid.* p. 49.

⁶⁵ *Ibidem*, p. 62.

⁶⁶ André De Carvalho Ramos, "Derechos humanos y el mecanismo híbrido del MERCOSUR", p. 62.

organisation can impose, with their consent, these duties to the Member States. This imposition is abstract – declared in the regional texts or declaration. However, affirming the respect for the rule of law is one thing; assuring the respect of the rule of law in the Member States is another. How do the EU and Mercosur make the rule of law functional to the region? Is it an effective instrument or does it only cause more trouble in the amelioration of their legal order? Do they have a common language in this implementation? Both the regions pass through a legal approach and a political one because they established norms, but also political instruments. Indeed, norms represent the hard-law- approach⁶⁷ of the regional organisation (or the Member States) and this sometimes crashes with the protection of national sovereignty. Indeed, regional organisations also support *soft law*⁶⁸ instruments, aimed at ameliorating the Rule of Law through politics. Furthermore, the EU and Mercosur established regional judicial bodies to uphold the regional legal order – to enforce the regional organisation. The following paragraphs will introduce the rule of law enforcement through legal, political, and judicial instruments.

A. **Conditionality⁶⁹ - *Clausula democratica*: art. 7 TEU and the Ushuaia Protocols**

‘Every organization requires some structure and an at least ostensible purpose. That requires the establishment of some at least minimal practices for disciplining unacceptable conduct by members’.⁷⁰ Both the EU and Mercosur’s membership is not free or without conditions. Indeed, the condition to be part is to respect the rule of law/democratic values. The term *conditionality* is used by the EU legal order to set up a series of rules, and it has the same purpose as the *democratic clause*, enshrined in the Mercosur’s Protocol of Ushuaia. The point is always guaranteeing more stability at the regional level, despite the different degrees of integration in the EU and Mercosur. Additionally, the two instruments are similar, and Mercosur adopted a more efficient approach for the instruments the region has. On the other hand, the EU’s instruments are revealed to be less efficient, as explained below.

⁶⁷ Hard law refers generally to legal obligations that are binding on the parties involved and which can be legally enforced before a court.

⁶⁸ **Soft Law**, Oxford Public International Law, disponível em: <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1469?prd=MPIL>>. acesso em: 1 out. 2024.

⁶⁹ For a deep analysis of Regional organisations approach to democracy and need for democratic values, see WHITEHEAD, Laurence, Regional organizations and democratic conditionality: Family resemblances and shaming, **International Political Science Review**, v. 42, n. 4, p. 546–560, 2021.

⁷⁰ *Ibidem*, p. 556.

1. *The same procedure does not fit for all : the EU and Mercosur's norms to protect the rule of law.*

Article 7 TEU⁷¹ affirms the competence of one-third of the MSs, the European Parliament, the European Commission, or the Council to submit a declaration of risk of a serious breach of the EU values, enshrined in art. 2 TEU. The Council has the power to verify this determination, and then it can write recommendations to the States to stop this behaviour. Secondly, if there is no risk but a real breach and this persists, the European Council acting by unanimity can determine this existence. If so, there is a vote by a qualified majority of the Council to establish a sanction, meaning the suspension of the rights of the legal person, etc. Thus, Art. 2 TEU sets the rule of law's standards and Art. 7 aims at guaranteeing its respect. The control can be horizontal or vertical – within MSs or from the EU institutions⁷². Due to the obligations imposed on the Member States to respect the rule of law, the concept acquires a normative dimension in the EU's legal order. However, implementing its normativity is very hard due to the procedure that can be dismantled as soon as one MS has a different political interest⁷³.

⁷¹ Art. 7 TEU. 1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

⁷² See The Rule of Law Framework in para B.1. and Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, **Max Planck Yearbook of United Nations Law Online**, v. 5, n. 1, p. 751–754, 2001. p. 109 *see* “It is derived from Article 2, first and second sentence TEU as well as from Article 7 TEU that a similar rule of law standard applies both vertically between the Union level and the Member States’ level and horizontally among the Member States themselves.”

⁷³ KOCHENOV, Dimitry; PECH, Laurent, Better Late than Never? On the European Commission’s Rule of Law Framework and its First Activation, **JCMS: Journal of Common Market Studies**, v. 54, n. 5, p. 1062–1074, 2016. In fact Article of Kochenov about art. 7

In 1998 Mercosur countries approved the Protocol of Ushuaia *sobre compromisso democrático no Mercosul, Bolivia e Chile* (hereinafter *Ushuaia I*)⁷⁴. The Ushuaia Protocols are two multilateral international agreements signed not only by Mercosur's members but also by its associated members⁷⁵ and they are aimed at protecting democracy in the Mercosur region⁷⁶. The 'fully functioning democratic institutions are an essential condition for the development of integration processes among the States Parties to this Protocol' (Art.1)⁷⁷. With Ushuaia I, Mercosur implemented the principle of *Las Lenas*: respect for democracy is a pre-condition to be a Member State of Mercosur and an associated member. Art. 4 Ushuaia I provide for the procedure in case of violation of democracy and it can be compared to Art. 7 TEU. More specifically, Art. 4 first Protocol affirms that in case of a breach of democracy in one of Mercosur's MSs, the other MS will first promote a consultation procedure. If, after the consultation, the State under control will not change its behaviour, there is a regional intervention, which consists of adopting preliminary measures to inhibit the action of the State (Art. 5) - suspension. One must specify that there is no mention of the rule of law concept. However, the need to promote democracy is consistent with the substantial idea of the rule of law explored in Mercosur, and in the OAS as well. In addition, the suspension clause provided by Ushuaia I empowered the regional organisation and provided for a normative dimension of the rule of law.

Afterwards, in 2011, in Montevideo, Mercosur countries approved another Protocol on the democratic compromise in Mercosur (hereinafter *Ushuaia II*)⁷⁸. This aimed at improving the procedure of Ushuaia I, providing for a more detailed and institutionalised procedure, giving the competence to discuss and promote suspension to the Council of Common Market (Conselho Mercado Comum)⁷⁹. The Presidents of Member States or the Ministers of foreign affairs will reunite in an extraordinary session, and they will start a consultation. If they confirm the crisis, first they are required to find political solutions (Art. 3 §1). If the dialogue is not effective, Art 6 provides for the suspension. Ushuaia II was never ratified (and probably it will

⁷⁴ MERCOSUR. "Protocolo de Ushuaia sobre Compromiso Democrático en el MERCOSUR, la Republica de Bolivia y la Republica de Chile." Accessed June 1, 2023. <https://www.mercosur.int/documento/protocolo-ushuaia-compromiso-democratico-mercosur-bolivia-chile/>.

⁷⁵ Brazil, Argentina, Uruguay, Paraguay, Chile, Bolivia, Ecuador, Peru. and *see* FUCCILLE; LUCIANO; BRESSAN, PARA ALÉM DO COMÉRCIO.p. 227.

⁷⁶ CANEPA, Los derechos humanos en el MERCOSUR. p. 168.

⁷⁷ Protocol Ushuaia I, 1998 art. 1.

⁷⁸ MERCOSUR/CMC/DEC 27/11.

⁷⁹ Art. 2 MERCOSUR CMC/DEC 27/11 : They decided to include the Council of Market of Mercosur.

never be) because it provides for the closure of borders as a sanction.⁸⁰ Paraguay would have been without any other connection, so it had never voted for the protocol. Consequently, in case of a democratic crisis, Mercosur would still apply Ushuaia I. However, Ushuaia II Protocol can serve as a guideline for Member State's actions, and it underlines the need for stronger democratic control.⁸¹

2. *Case of application of Art. 7 and Protocol of Ushuaia*

Art. 7 TEU has a huge obstacle: the unanimity of the European Council to start the procedure of infraction (Art. 7§2 TEU). In 2017 the Commission started the proceeding under Art. 7 TEU against Poland for a controversial declaration related to the independence of the judiciary⁸²; in 2018 the European Parliament voted for a Resolution to the Council for the application of Art. 7 TEU because of Hungarian constitutional reform.⁸³ However, the process has not yet reached its final stage, where sanctions such as the suspension of voting rights could be imposed, because the unanimity creates an impasse. Indeed, there is unanimity without the vote of the accused country, but Hungary and Poland allied, and Hungary did not vote Art. 7 TEU against Poland, and vice versa.

In Mercosur, the Ushuaia Protocol was about to be used in the second Paraguayan crisis of the 90s. However, Paraguay was the only country that ratified it. The Protocol would have been in force only in 2002, and the other members did not have the power to formally apply it.⁸⁴ But Uruguay, Brazil and Argentina solved the democratic crisis diplomatically. Even without a legal basis, they intervened to preserve Mercosur's values. In addition, later, in 2012, the

⁸⁰ Mercosur CMC/DEC/27/11. Protocolo Ushuaia II, Art. 6 §b. In case of a breakdown or threatened breakdown of the democratic order in a Party to this Protocol, the Presidents of the other of this Protocol, the Presidents of the other Parties or, failing that, their Ministers for Foreign Affairs and Foreign Ministers of the other Parties shall meet in an enlarged session of the Market Ministers for Foreign Affairs and the enlarged session of the Council of the Common Market. may take, inter alia, the following measures: (...) b.- Partial or total closure of land borders. Suspend or limit trade, air and maritime air and maritime traffic, communications and the provision of energy, services and supplies, services and supplies.

⁸¹ RAMOS, *Derechos humanos y el mecanismo híbrido del MERCOSUR.*, p. 64.

⁸² Proposal for a COUNCIL DECISION on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law.

⁸³ European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)). Annex to the Resolution §1.

⁸⁴ VAN DER VLEUTEN; HOFFMANN, *Explaining the Enforcement of Democracy by Regional Organizations.* By the time of the second crisis, Mercosur had approved a democratic clause. Brazilian President Cardoso and Uruguayan Foreign Minister Didier Operti discussed the option of applying the relevant Protocol of Ushuaia. Ironically, the only country that had ratified the Protocol at that moment was Paraguay itself; the Protocol was not due to come into force until January 2002. A formal invocation of the Protocol was however not necessary as the crisis did not last long. P. 749.

protocol was used with Paraguay in an impeachment procedure carried out in 24 hours, suspending Paraguay until a new democratic election.⁸⁵ The Protocol of Ushuaia mobilised the suspension of Venezuela in 2017⁸⁶. Mercosur countries were only (officially) five, with Venezuela, and the unanimity can be easily reachable. On the other side, one should underline the strong will of the region to be consistent in the protection of the Rule of Law among its Member States and concerning the EU, it illustrates the need to consider a change or at least to think about a change in the voting procedure.

B. The secret power of the soft approach

Enforcing the rule of law through hard laws is very important, yet it is not easy to implement the laws. Indeed, the risk is to reach a stalemate because the MSs do not give their consent since they feel their sovereignty is being violated. In addition, one must consider the differences between the countries, for example, Brazil and Paraguay do not always have the same needs and understanding of problems and issues. The EU has similar concerns, especially due to the geographical, social, and economic distance between MSs. For these reasons, regional organisations promote political instruments to approximate countries and ameliorate (and protect) the rule of law. In this, the EU has a very complex apparatus of policy actions aimed at promoting and protecting the rule of law. Mercosur is younger and with no supranational powers, yet it uses political action plans for its MSs, avoiding the risk of impeding the promotion of certain policies because of the intergovernmental approach. The EU and Mercosur have a different institutional framework because the promotion of the rule of law belongs in the EU mainly to the European Commission, the ‘executive body’ of the EU. Mercosur created the Centre of the rule of law in the Secretary, which is no longer in function, and the Institute of Human Rights and Public Policies has mainly network and research competencies.⁸⁷

⁸⁵ FERREIRA, Túlio Sérgio Henriques; PAIVA, Ana Cláudia Alves Cunha, Questioning Paraguay’s Suspension from MERCOSUR: The First Application of the Democratic Clause of the Regional Bloc, **Contexto Internacional**, v. 44, p. e20210002, 2022. p. 6.

⁸⁶ <https://www.mercosur.int/suspension-de-venezuela-en-el-mercosur/>

⁸⁷ See below §II.B.2.

1. *The European Commission Policies to Enforce the Rule of Law*

‘The question is: how does the European Commission, guardian of the treaties, shape the EU’s rule of law policy?’⁸⁸ The EC has played and continues to play a vital role in this⁸⁹. It has a broad *action capacity*⁹⁰ to deal with the rule of law through programme and policy instruments, through administrative/executive bodies, such as the Agencies, and through the promotion of legislation to enhance the rule of law’s compliance. Due to the scope of the paper, there is no interest in mapping the whole EU Commission action yet to select relevant instruments to demonstrate the promotion and protection of the rule of law through political action.

In this realm, amongst several actions, the Commission proposed the *EU Framework to Strengthen the Rule of Law*. It is an instrument aimed at *monitoring* the Member States based on four pillars: the justice system, the anti-corruption framework, media pluralism, and other institutional issues related to checks and balances.⁹¹ Within this *monitoring* mechanism, the EC approved the EU Justice Scoreboard and the EU Rule of Law Report – both tools to control the Member States’ preservation of the rule of law. The new framework does not add any competence to the EC but clarifies how it can exercise its power if one MS violates the rule of law.⁹² ‘New tool, new challenges, one might say, considering that the Rule of Law Framework was of a different kind than the previous ones.’⁹³ With the RLF the Commission decides to anticipate the procedure of Art. 7 TEU, through an antecedent, *soft* phase, the EC can assess if there are clear preliminary indications and can send an opinion to the government concerned.⁹⁴ After the assessment, if there is no reaction, the EC can send recommendations, indicating to the government what to do to avoid the application of sanctions by the Commission.

2. *The Centro do Mercosul de Promocao de Estado de Direito and the Instituto de Politicas Publicas e Direitos Humanos. (IPPDH)*

Two different political institutions – the Centre to Promote the Rule of Law (CMPED) and the Institute of Public Policies and Human Rights (IPPDH) have been identified as actors

⁸⁸ Coman, *The Politics of the Rule of Law in the EU Polity*, p. 12.

⁸⁹ *Ibidem*, p. 95.

⁹⁰ COMAN, *Strengthening the Rule of Law at the Supranational Level*, p. 3

⁹¹ *Ibidem*, p. 3.

⁹² COMAN, Ramona, **The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges**, Cham: Springer International Publishing, 2022. p. 112.

⁹³ *Ibidem*, p. 112.

⁹⁴ communication-from-the-commission-to-the-european-parliament-and-the-council. Brussels, 11.3.2014 COM(2014) 158 final A new EU Framework to strengthen the Rule of Law p. 7.

engaged in the promotion of the ‘Mercosur rule of law’. From 1991 until now, the Mercosur *acquis* has progressed⁹⁵ in legislative production and the creation of new institutions. In this regard, Mercosur is developing a *practical* and *policy-instrument-oriented* dimension of the rule of law without regulating it, yet improving the concepts through *soft* instruments, such as workshops, citizen initiatives, and non-state actors’ activities.

In 2004, after 13 years, Mercosur adopted the Decision for the institution of the Centre for the Promotion of the Rule of Law.⁹⁶ The preamble affirms that the rule of law is the precondition for promoting a democratic state, and it is fundamental to improve the integration in Mercosur.⁹⁷ Lately, with Decision 19/09, the centre became a permanent unit of the secretary of the *Tribunal Permanente de Revision* of Mercosur.⁹⁸ The ultimate need is the promotion of the rule of law to achieve better regional integration with the organisation of courses, workshops, and the publication of academic contributions to the rule of law in Mercosur. The CMPED offers video conferences explaining different tools for Mercosur integration⁹⁹. On one side, this is a significant step for regional integration, on the other, the Centre is not as active as it was expected to be. Plus, comparing it with the EU’s framework, there is a different level of awareness and attention on this specific topic.

With the decision 40/04¹⁰⁰, Mercosur countries approved the creation of the Reunion on Human Rights (RAADH), attended not only by the Member States but also by the associate member states (Colombia, Ecuador, Bolivia). This is another policy instrument made to work on the integration from the point of view of the rule of law and fundamental rights.¹⁰¹ In this context, during the III RAADH in 2006, there was a first proposal related to the establishment

⁹⁵VERVAELE, MERCOSUR AND REGIONAL INTEGRATION IN SOUTH AMERICA., p. 304.

⁹⁶ Decision CMC DEC 24/04.

⁹⁷ DECISION CMC DEC 24/04, *PREAMBLE*: CONSIDERANDO QUE O ESTADO DE DIREITO BASEIA-SE NA DEMOCRACIA E NA EFICÁCIA DE SUAS INSTITUIÇÕES. QUE A VIGÊNCIA DE UM EFETIVO ESTADO DE DIREITO NO MERCOSUL, QUE SE FUNDAMENTE NA DEMOCRACIA, NO RESPEITO AOS DIREITOS HUMANOS E NAS LIBERDADES FUNDAMENTAIS É REQUISITO INDISPENSÁVEL PARA UM DESENVOLVIMENTO INTEGRAL, JUSTO E EQUITATIVO DA SUBREGIÃO. QUE É NECESSÁRIO CONTAR COM UMA ENTIDADE CENTRAL NO MERCOSUL QUE, PARA A PROMOÇÃO DO ESTADO DE DIREITO, ORGANIZE E EXECUTE AÇÕES EM MATÉRIA DE INVESTIGAÇÃO ACADÊMICA, CAPACITAÇÃO E DIFUSÃO.

⁹⁸MERCOSUR DEC 09/19

https://www.tprmercotur.org/es/cmped_intro.htm#:~:text=E1%20Centro%20Mercotur%20de%20Promoci%C3%B3n.en%20el%20Mercotur%20y%20su

⁹⁹ Tribunal Permanent de Revision https://www.tprmercotur.org/es/cmped_videos.htm

¹⁰⁰ MERCOSUR/CMC/ DEC 40/04.

¹⁰¹ "The RAADDHH is a space for intergovernmental coordination on public policies on human rights, which brings together every six months the main authorities in this field from each member and associate country of MERCOSUR".

of a regional human rights body that would work based on the identity and development of the countries in the bloc. Therefore, in 2009¹⁰², Mercosur approved the creation of the Institute of Public Policy and Human Rights of MERCOSUR (IPPDH), under the scope of the RAADH¹⁰³ and with its permanent headquarters in the City of Buenos Aires¹⁰⁴. Its role is ‘the coordination of public policies on human rights at the regional level, technical cooperation in the process of formation of such policies, applied research to produce technical information, studies, and enquiries to offer a discussion on human rights.’¹⁰⁵

The IPPDH is shaping the concept of the rule of law in Mercosur through the promotion of human rights and public policy. Even more than with the CMPED, the IPPDH builds common knowledge of human rights through policy activities and a ‘*soft*’¹⁰⁶ and gradual approach. Moreover, the role of the centre reinforces the substantial dimension of the rule of law, focusing on the promotion and protection of human rights. In addition, the institute is not conceived only as a Human Rights Institute but as a public policy institute, and this means that it will contribute to promoting human rights in Mercosur Member States¹⁰⁷.

‘In MERCOSUR there is a valuable institutional asset for making public policies to guarantee rights: an organised, mobilised, active civil society, willing to control and challenge, but also to take part in political discussion, to dialogue and reach agreement with governments, to participate in broad political projects for social transformation and change, particularly given the historical scenario of popular and highly representative governments in the countries of the regional organisation’.¹⁰⁸

C. The role of the judiciary in enforcing the (regional) rule of law.

Both the EU and Mercosur established a regional tribunal to correctly apply regional norms. However, despite the will of Mercosur to go towards the EU with the creation of the Tribunal Permanente de Revisión¹⁰⁹, the latter does not have the same competence as the Court of Justice of the European Union (CJEU)¹¹⁰. The role of the judiciaries in both regions

¹⁰² MERCOSUR/CMC/ DEC 14/09.

¹⁰³ Instituto de Políticas Públicas e Derecho Humanos, <https://www.ippdh.mercosur.int/historia/?lang=pt-br> .

¹⁰⁴ MERCOSUR/CMC/DEC 32/09.

¹⁰⁵ CANEPA, Los derechos humanos en el MERCOSUR. p. 165.

¹⁰⁶ To understand the use of the concept *soft*, see: **Soft Law**.

¹⁰⁷ ABRAMOVICH, Víctor, Derechos humanos en el marco del proceso de integración regional en el MERCOSUR, **Revista de la Secretaría del Tribunal Permanente de Revisión**, v. 1, n. 2, p. 351–361, 2013. p. 361.

¹⁰⁸ *Ibid.* p. 361

¹⁰⁹ **TPR Mercosul**, disponível em: <<https://www.tprmercosur.org/pt/index.htm>>. acesso em: 10 nov. 2023.

¹¹⁰ ALMEIDA, Paula Wojcikiewicz, The Challenges of the Judicial Dialogue in Mercosur, **Law & Practice of International Courts & Tribunals**, v. 14, n. 3, p. 392–406, 2015.

contributes to their regional integration¹¹¹ and has implemented, in different degrees, the regional conceptualisation of the rule of law.

1. *The essential contribution of the CJEU in shaping the EU rule of law.*

‘The rule of law relies on the case-law of the Court of Justice of the European Union.’¹¹² At the beginning of the European community, the rule of law was conceived as a concept to be affirmed only at the national level¹¹³. Then, ‘the EU has established, through the evolutionary interpretation of the CJEU (...) a legal order where the rule of law is implemented’.¹¹⁴ In the judgment *Costa v. Enel*, the CJEU affirmed that the EEC has created ‘its legal system’¹¹⁵. The CJEU stated the principle of primacy of EU law and the principle of direct effect, to then arrive also at the interpretation and affirmation of the rule of law. The CJEU, through its case law, differentiates the EU from the other regional organisations because the EU’s judicial system managed to create its own (kind of extended) space in building an increasingly integrated region¹¹⁶. The case *Les Verts* (1986) anticipated the constitutional principle of the rule of law held in Art. 2 TEU¹¹⁷. In this regard, the CJEU affirmed that:

‘It must first be emphasised in this regard that the European Economic Community is a community based on the rule of law since neither its Member States nor its institutions can avoid a review of the question of whether the measures adopted by them conform with the basic constitutional charter, the Treaty.’¹¹⁸

The case dealt with the participation of an association not represented by the European Parliament but able to take place in the EU elections. In this case, the CJEU stated the right for

¹¹¹ Concerning the central role of the TPR in Mercosur Integration see CATERINA TUOSTO, L’evoluzione del sistema di risoluzione delle controversie del Mercosur e “influenze” UE in *edited by* Piero Pennetta, “L’evoluzione dei sistemi giurisdizionali regionali ed influenze comunitarie,” 2010, Cacucci Editore, pp. 51-70.

¹¹² **Defending Checks and Balances in EU Member States.**, p. 101.

¹¹³ N. Levrat, ‘Articulating Evolutionary Interpretation and the Rule of Law: The EU as a Composite Legal Order Based on Relative Rules of Law’ in (eds by) Georges Abi-Saab et al., *Evolutionary Interpretation and International Law*, (Hart Publishing, 2019): 313-327, p. 318.

¹¹⁴ *Ibid*, p.319. Plus, an extremely interesting analysis An essential academic contribution to this discussion can be found in Jorge Riquelme Rivera, “La relación entre integración y seguridad en el MERCOSUR y sus proyecciones hacia Sudamérica.” *Revista de relaciones internacionales, estrategia y seguridad* 8, no. 1 (January 12, 2013): 279-308. <https://doi.org/10.18359/ries.78>.

¹¹⁵ Flaminio Costa v ENEL.p. 593.

¹¹⁶ This is not the place to discuss the evolution of the CJEU, one must say it is highly discussed at legal-scholar level because the CJEU’s interpretation is expanding its conclusions below the scope of the Treaties. on this See Chapter 6 ALTER, **Establishing the Supremacy of European Law**.

¹¹⁷ **Defending Checks and Balances in EU Member States.** p. 110.

¹¹⁸ Parti écologiste “Les Verts” v European Parliament. §23

legal persons to receive legal protection.¹¹⁹ The CJEU endorsed the notion of a ‘community based on the rule of law’, connecting it to the constitutional character of the Treaties.¹²⁰ The role of the CJEU was to provide concrete legal rules to implement the principle¹²¹: for example, in *Les Verts*, the CJEU clarified the duty to provide judicial remedies for legal persons, and it affirmed that the right to access to justice is mandatory in a rule of law region.¹²²

In *Hungary v. Parliament and Council*¹²³ and *Poland v. Parliament and the Council*¹²⁴ the Court had to decide about the rule of law conditionality mechanism established by Regulation 2092/2020. This case is particularly important because the Court was asked to judge the competence of the EU to reduce economic investments when there is a violation of the rule of law, and the judgment is recent - 2022. The CJEU affirmed that: ‘Article 2 TEU is not merely a statement of policy guidelines or intentions but contains values which (...) are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States’.

2. *Exception or new rule: the TPR and defence of democracy?*

The *Protocolo des Olivos* established the *Tribunale Permanente de Revision* (Permanent Tribunal of Revision, hereinafter TPR)¹²⁵ on 13 August 2004 and is based in Asunción. It is composed of five arbitrators who remain in office for two or three years, depending on the case. The protocol established several mechanisms to resolve controversies¹²⁶, and it states that the TPR is competent to provide non-binding¹²⁷ *advisory opinions*¹²⁸. The TPR can solve controversies submitted by the *ad hoc Arbitration Tribunal*, according to Art. 23 of *Protocolo des Olivos*, after the negotiation, the parties can submit the dispute directly to the TPR, which will act as an *ad hoc* Tribunal of Arbitration.

¹¹⁹ *Ibidem*, ‘Natural and legal persons are thus protected against the application to them of general measures which they cannot contest directly before the Court by reason of the special conditions of admissibility laid down in the second paragraph of Article 173 of the Treaty.’

¹²⁰ **Defending Checks and Balances in EU Member States**. p. 106.

¹²¹ *Ibidem*, p. 114.

¹²² *Ibidem*, P. 190-191.

¹²³ CJEU, C-156/21 – Hungary v. Parliament and Council

¹²⁴ CJEU, C-157/21- Poland v Parliament and Council

¹²⁵ *Protocolo des Olivos Para A Solução De Controvérsias No Mercosul*, 19 fevereiro 2002.

Art. 1 1. Disputes arising between States Parties concerning the interpretation, application or non application or non-compliance with the Treaty of Asunción, the Ouro Preto Protocol, protocols and agreements concluded within the framework of the Treaty of Asunción, the Decisions of the Common Market Council, the Resolutions of the Common Market Group and the Guidelines of the Mercosur Trade Commission shall be subject to the procedures established in this Protocol. (...)

¹²⁶ Chapter IV;V;VI *Protocolo des Olivos*.

¹²⁷ MERCOSUR DEC 37/2003 Art. 11.

¹²⁸ Art. 1 *Protocolo des Olivos*

The TPR had mainly solved market controversies; however, nothing impedes giving opinions concerning democratic assessment in Mercosur's Member States. 'On 29 June 2012, following a hasty deposition of Paraguay's President by the country's Congress, the presidents of Argentina, Brazil and Uruguay decided to suspend Paraguay's rights to participate in Mercosur decision-making.'¹²⁹ In this context, the President of Paraguay, Lugo, had been impeached by the Paraguayan government, and for this, the country was facing instabilities, both democratically and socially¹³⁰. All this brought the Mercosur Member States and its associated Members to apply the Ushuaia I protocol and to suspend Paraguay. In the meanwhile, Mercosur was voting for the accession of Venezuela, and Paraguay was considered not empowered to vote according to the Ushuaia Protocol. Paraguay reacted by bringing the other States in front of the TPR, 'invoking the emergency procedure provided for in Article 24 of the 2002 Olivos Protocol for the Solution of Controversies in the Mercosur'¹³¹ This was the first (and until now the last) time the TPR was invoked to interpret the Ushuaia I Protocol¹³². The three defendants (Argentina, Brazil, and Uruguay) sustained that the TPR did not have the competence to judge the case due to its market-related mandate. They argued that the Member States had the *exclusive authority* to interpret if there was a violation of democracy or not, and not the TPR because it was a political and not an economic issue.¹³³

The TPR replied that its *ratione materiae* competence covers controversies related to the interpretation or non-implementation of Mercosur legislations.¹³⁴ If the maintenance of democracy is a non-derogable condition for Mercosur, the Ushuaia Protocol I is an essential part of Mercosur's legislation, as the market rules; therefore, its correct interpretation and application is also submitted to the TPR's competence¹³⁵. 'The system's legitimacy is based on its contribution to stability as the integration process progresses in its various spheres'.¹³⁶ 'It follows that the dispute settlement system covers the rules of the Ushuaia Protocols insofar as

¹²⁹ VIDIGAL, Geraldo, Enforcing Democracy at the Regional Level: Paraguay's Suspension before the Mercosur Court, **Cambridge Journal of International and Comparative Law**, v. 2, n. 2, p. 337–349, 2013. P. 337.

¹³⁰ ALMEIDA, Wilson, Integração e democracia: os interesses políticos locais que distorcem o direito internacional e a crise política resultante da suspensão do Paraguai do Mercosul, **Revista de Informação Legislativa**, v. 51, n. 203, p. 91–110, 2014.p. 93.

¹³¹ VIDIGAL, Enforcing Democracy at the Regional Level. P. 337.

¹³² For a further explanation *see Ibid.* and ALMEIDA, Integração e democracia: os interesses políticos locais que distorcem o direito internacional e a crise política resultante da suspensão do Paraguai do Mercosul. e SANTOS; SANTOS, Os Vinte e Quatro Anos do Sistema de Solução de Controvérsias do Mercosul e o Caso de Suspensão do Paraguai.

¹³³ VIDIGAL, Enforcing Democracy at the Regional Level. P. 339.

¹³⁴ Laudo 01_12 §36-37

¹³⁵ *Ibidem*, §39.

¹³⁶ *Ibidem*.

they do not affect or may affect the rights and obligations of any of the States' Parties. Therefore, the right of a State Party to have recourse to this system if it considers that its rights have been violated in the application of the rules of the Protocol of Ushuaia is not up for debate'.¹³⁷ The scope of the *ratione materiae* competence acknowledged by the Tribunal demonstrates the *normative* dimension of the rule of law in Mercosur, despite the absence of a norm, the practical reactions of Mercosur organs are contributing to making the rule of law a judicial concept and a political one.

CONCLUSION: SHARED UNDERSTANDING AND COMMON CHALLENGES A BELIEF IN EU-MERCOSUR DIALOGUE.

The rule of law is a complex and multidimensional concept in both the EU and Mercosur, and it is the key to their regional integration. The two previous Sections illustrated how the two regions have different approaches concerning the definition of the rule of law, but they share the same purpose: the need to promote and protect values to achieve regional stability and (maybe) integration. Furthermore, they both embrace the idea that the rule of law encompasses both democracy and fundamental rights, with different processes.

Europe has a more *formalistic* approach because it decided to include the concept of the rule of law in its Treaties. Furthermore, they adopted specific legislations, political institutions acted with *ad hoc* policy instruments, and the CJEU interpreted and applied the concept of the rule of law to its case law. In contrast, Mercosur approaches the concept *substantially*. The idea of the rule of law was not included in its regional legal texts, yet there was the need to promote stability and then to promote and protect democracy and human rights.

Despite these different approaches, the EU and Mercosur are both experiencing regional instability concerning the mounting dissensus over the rule of law and democracy. In the case of the EU, according to the President of the Court of Justice of the EU, Koen Lenaerts: 'I believe it is no exaggeration to say that its foundations as a Union based on the rule of law are under threat and that the very survival of the European project in its current form is at stake'.¹³⁸

On the other side, during my interviews concerning the integration of Mercosur, an academic affirmed:

¹³⁷ *Ibidem*, §40.

¹³⁸ FIDE 2021 XXIX FIDE CONGRESS The Hague, 3 – 6 November 2021 Opening Ceremony on 4 November 2021 Constitutional Relationships between Legal Orders and Courts within the European Union by Koen Lenaerts. <https://forumfws.eu/fide-opening-ceremony-koen-lenaerts-04112021-1-.pdf> Accessed 22nd April 2024.

‘Mercosur, (...) South American and perhaps Latin American integration, are also in a process that we can call a crisis, right? At least 2016-17-18 were very difficult years for all these integration processes because (...) there began to be a domestic politicisation, with increasingly polarised governments, left and right’.¹³⁹

The two geographical areas are different in terms of their characteristics and modes of intervention, but the central problem is the same: internal regional instability. Indeed, the EU is dealing with illiberal governments, such as the former Polish executive and the Hungarian one¹⁴⁰. In addition, the EU Member States are now assisting a polarization towards far-right parties willing to limit civil rights achieved in domestic realms¹⁴¹. On the other side, Mercosur suspended Venezuela in 2017 for the violation of the Ushuaia I protocol¹⁴² because of the absence of a democratic order. Nowadays, the situation in the country has not evolved.¹⁴³ The years 2016-2023 were not easy for Brazil after the impeachment of President Dilma Rousseff, the arrest and condemnation of the Former and now current President Lula¹⁴⁴, and the election of Jair Bolsonaro¹⁴⁵, an extreme-right politician. Additionally, the new President of Argentina, Javier Milei, recently elected, made declarations that can compromise the rule of law: the denial of the violation of human rights in Latin America, the abolishment of the Minister of Education, etc. It is still early to discuss the impact of this new government, yet the fear for the stability of Mercosur is perceivable¹⁴⁶. These governments in the EU and Mercosur are democratically elected; however, the rule of law, especially fundamental rights, is impacted. And when the rule

¹³⁹ ____ Interview Brazilian Professor of International Relations specialized in Regionalism and Mercosur. Recording. Rio de Janeiro. January 17th, 2024.

¹⁴⁰For Hungary *see* FLECK, Zoltán; CHRONOWSKI, Nora; BARD, Petra, *The Crisis of the Rule of Law, Democracy and Fundamental Rights in Hungary*, 2022. P. 4- 8. For Poland *see* **Defending Checks and Balances in EU Member States**. pp. 18-22.

¹⁴¹If we think about how Polish governments restricted the right to abortion. Another example is the Italian government which is now contrasting the LGBTQ* rights affirmed multiple time in the EU legal order. *See also* **Defending Checks and Balances in EU Member States**. “The Union’s ‘rule of law crisis’ is a multi-faceted phenomenon.1 Of particular concern are Member States where ruling majorities wilfully uproot the separation of powers.” p. 381.

¹⁴² DIEGUEZ, Julian, *Decisão sobre a suspensão da Venezuela no MERCOSUL*.

¹⁴³ SIMAN, Tainá, *Non-democracy tolerance: Venezuela in Mercosur and Hungary in the European Union, Regions and Cohesion*, v. 13, n. 2, p. 105–118, 2023. p. Since the second suspension from Mercosur, the Venezuelan situation has deteriorated, with the government now consisting of a National Constituent Assembly, in which all elected members are pro-government, and with Maduro’s reelection for another six years being considered not legitimate by several countries and international organizations. p. 109.

¹⁴⁴ *See* CREMONESE, Dejalma, *A crise política no Brasil e o impeachment de Dilma Rousseff em 2016, Campos Neutrais - Revista Latino-Americana de Relações Internacionais*, v. 1, n. 3, p. 70–87, 2019.

¹⁴⁵ RIBEIRO HOFFMANN, Andrea, *Brazil Under Bolsonaro, Latin American Policy*, v. 11, n. 2, p. 335–338, 2020.

¹⁴⁶ **Argentina de Milei não deve romper com Mercosul, avaliam empresários e especialistas brasileiros**, disponível em: <<https://oglobo.globo.com/economia/noticia/2023/11/20/argentina-pos-milei-nao-deve-romper-com-mercosul-avaliam-empresarios-e-especialistas-brasileiros.ghtml>>. acesso em: 24 maio 2024.

of law is impacted, regional trust is affected too. To conclude, the paper gave the instruments to understand the regions, and to then build a dialogue between two actors.

BIBLIOGRAPHY

ABI-SAAB, Georges; KEITH, Kenneth James; MARCEAU, Gabrielle; *et al* (Orgs.). **Evolutionary interpretation and international law**. Oxford, UK ; Chicago, Illinois: Hart Publishing, 2019.

ABRAMOVICH, Víctor. Derechos humanos en el marco del proceso de integración regional en el MERCOSUR. **Revista de la Secretaría del Tribunal Permanente de Revisión**, v. 1, n. 2, p. 351–361, 2013. Disponível em: <<https://dialnet.unirioja.es/servlet/articulo?codigo=5830143>>. Acesso em: 8 abr. 2024.

ALMEIDA, Paula Wojcikiewicz. The Challenges of the Judicial Dialogue in Mercosur. **Law & Practice of International Courts & Tribunals**, v. 14, n. 3, p. 392–406, 2015. Disponível em: <<https://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=112187504&site=ehost-live>>. Acesso em: 8 nov. 2023.

ALMEIDA, Wilson. Integração e democracia: os interesses políticos locais que distorcem o direito internacional e a crise política resultante da suspensão do Paraguai do Mercosul. **Revista de Informação Legislativa**, v. 51, n. 203, p. 91–110, 2014.

ALTER, Karen J. **Establishing the Supremacy of European Law**. [s.l.]: Oxford University Press, 2003. Disponível em: <<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199260997.001.0001/acprof-9780199260997>>. Acesso em: 14 abr. 2024.

BÁRD, Petra. Canaries in a coal mine: Rule of law deficiencies and mutual trust. **Pravni zapisi**, v. 12, n. 2, p. 371–395, 2021. Disponível em: <<https://scindeks.ceon.rs/Article.aspx?artid=2217-28152102371B>>. Acesso em: 6 fev. 2023.

BIANCULLI, Andrea C. Politicization and Regional Integration in Latin America: Implications for EU–MERCOSUR Negotiations? **Politics and Governance**, v. 8, n. 1, p. 254–265, 2020. Disponível em: <<https://www.cogitatiopress.com/politicsandgovernance/article/view/2598>>. Acesso em: 25 abr. 2023.

BLANKE, Hermann-Josef; MANGIAMELI, Stelio (Orgs.). **The European Union after Lisbon**. Berlin, Heidelberg: Springer Berlin Heidelberg, 2012. Disponível em: <<http://link.springer.com/10.1007/978-3-642-19507-5>>. Acesso em: 2 fev. 2024.

BÖRZEL, Tanja A; RISSE, Thomas. Oxford Handbook of Comparative Regionalism.

CANEPA, Martin. Los derechos humanos en el MERCOSUR. **Rev. secr. Trib. perm. revis.**, v. 3, n. 6, p. 161–177, 2015. Disponível em: <<http://www.revistastpr.com/index.php/rstpr/article/view/145>>. Acesso em: 24 maio 2023.

COMAN, Ramona. Strengthening the Rule of Law at the Supranational Level: The Rise and Consolidation of a European Network. **Journal of Contemporary European Studies**, v. 24, n. 1, p. 171–188, 2016. Disponível em: <<http://www.tandfonline.com/doi/full/10.1080/14782804.2015.1057482>>. Acesso em: 13 jan. 2023.

COMAN, Ramona. **The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges**. Cham: Springer International Publishing, 2022. (Palgrave Studies in European Union Politics). Disponível em: <<https://link.springer.com/10.1007/978-3-030-97367-4>>. Acesso em: 24 nov. 2022.

CREMONESE, Dejalma. A crise política no Brasil e o impeachment de Dilma Rousseff em 2016. **Campos Neutrais - Revista Latino-Americana de Relações Internacionais**, v. 1, n. 3, p. 70–87, 2019. Disponível em: <<https://periodicos.furg.br/cn/article/view/9677>>. Acesso em: 22 maio 2024.

CYRILLO, Carolina; FUENTES-CONTRERAS, Édgar Hérnan; LEGALE, Siddharta. The Inter-American Rule of Law in South American constitutionalism. **Seqüência Estudos Jurídicos e Políticos**, v. 42, n. 88, p. 1–27, 2021. Disponível em: <<https://periodicos.ufsc.br/index.php/sequencia/article/view/83437>>. Acesso em: 31 maio 2023.

DE ALMEIDA, Paulo Roberto. Regional integration in Latin America: historical developments, current challenges, especially in Mercosur. **Meridiano** 47, 2018.

DIEGUEZ, Julian. Decisão sobre a suspensão da Venezuela no MERCOSUL. Disponível em: <<https://www.mercosur.int/pt-br/decisao-sobre-a-suspensao-da-republica-bolivariana-da-venezuela-no-mercosul/>>. Acesso em: 22 abr. 2024.

EUROPEAN PARLIAMENT. DIRECTORATE GENERAL FOR EXTERNAL POLICIES OF THE UNION. **Assessing the political dialogue and cooperation pillar of the EU-Mercosur association agreement: towards a bi regional strategic partnership? : in depth analysis**. LU: Publications Office, 2022. Disponível em: <<https://data.europa.eu/doi/10.2861/559447>>. Acesso em: 19 dez. 2022.

FERREIRA, Túlio Sérgio Henriques; PAIVA, Ana Cláudia Alves Cunha. Questioning Paraguay's Suspension from MERCOSUR: The First Application of the Democratic Clause of the Regional Bloc. **Contexto Internacional**, v. 44, p. e20210002, 2022. Disponível em: <<https://www.scielo.br/j/cint/a/Y36SSkWBZ39SnqMZdYQGQWzB/>>. Acesso em: 12 abr. 2024.

FLECK, Zoltán; CHRONOWSKI, Nora; BARD, Petra. The Crisis of the Rule of Law, Democracy and Fundamental Rights in Hungary. 2022. Disponível em: <<https://papers.ssrn.com/abstract=4100081>>. Acesso em: 23 abr. 2024.

FUCCILLE, Alexandre; LUCIANO, Bruno Theodoro; BRESSAN, Regiane Nitsch. PARA ALÉM DO COMÉRCIO: MERCOSUL, DEMOCRACIA E SEGURANÇA REGIONAL. **Lua Nova: Revista de Cultura e Política**, p. 217–250, 2021. Disponível em: <<https://www.scielo.br/j/ln/a/VHBFrZDWxJpmfcS8Y6kG8Wh/>>. Acesso em: 4 abr. 2024.

KESTEMONT, LINA. **Handbook on Legal Methodology**. Cambridge: Intersentia, 2018.

KOCHENOV, Dimitry; PECH, Laurent. Better Late than Never? On the European Commission's Rule of Law Framework and its First Activation. **JCMS: Journal of Common Market Studies**, v. 54, n. 5, p. 1062–1074, 2016. Disponível em: <<https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12401>>. Acesso em: 18 mar. 2024.

LALUMIÈRE, Catherine. Quelques réflexions à propos du 70ème anniversaire de la Convention européenne des droits de l'homme. **Revue québécoise de droit international**, p. 53–68, 2021. Disponível em: <<http://id.erudit.org/iderudit/1078528ar>>. Acesso em: 26 fev. 2024.

MEYER, Thomas; DE SALES MARQUES, José Luís; TELÒ, Mario. **Regionalism and Multilateralism: Politics, Economics, Culture**. [s.l.]: Routledge, 2020.

PECH, Laurent. The Rule of Law. In: CRAIG, Paul; DE BÚRCA, Gráinne (Orgs.). **The Evolution of EU Law**. [s.l.]: Oxford University Press, 2021, p. 0. Disponível em: <<https://doi.org/10.1093/oso/9780192846556.003.0010>>. Acesso em: 19 abr. 2024.

PENNETTA, Piero. L'EVOLUZIONE DEI SISTEMI GIURISDIZIONALI REGIONALI ED INFLUENZE COMUNITARIE. 2010. (Cacucci Editore).

RAMOS, André De Carvalho. Derechos humanos y el mecanismo híbrido del MERCOSUR: ¿Cómo controlar la aplicación de la cláusula democrática? **Rev. secr. Trib. perm. revis.**, v. 3, n. 6, p. 48–68, 2015. Disponível em: <<http://www.revistastpr.com/index.php/rstpr/article/view/158>>. Acesso em: 1 jun. 2023.

RIBEIRO HOFFMANN, Andrea. Brazil Under Bolsonaro. **Latin American Policy**, v. 11, n. 2, p. 335–338, 2020. Disponível em: <<https://onlinelibrary.wiley.com/doi/abs/10.1111/lamp.12200>>. Acesso em: 25 abr. 2024.

SANTOS, Ricardo Soares Stersi dos; SANTOS, Rafael de Miranda. Os Vinte e Quatro Anos do Sistema de Solução de Controvérsias do Mercosul e o Caso de Suspensão do Paraguai. **Sequência (Florianópolis)**, p. 253–279, 2015. Disponível em: <<https://www.scielo.br/j/seq/a/36QnKNqYVJcMYLRfYhjdzhg/?lang=pt>>. Acesso em: 10 abr. 2024.

SCHEPPELE, Kim Lane; PECH, Laurent. What is Rule of Law Backsliding? **Verfassungsblog**, 2018. Disponível em: <<https://verfassungsblog.de/what-is-rule-of-law-backsliding/>>. Acesso em: 22 abr. 2024.

SIMAN, Tainá. Non-democracy tolerance: Venezuela in Mercosur and Hungary in the European Union. **Regions and Cohesion**, v. 13, n. 2, p. 105–118, 2023. Disponível em: <<http://berghahnjournals.com/view/journals/regions-and-cohesion/13/2/reco130206.xml>>. Acesso em: 22 abr. 2024.

STAPEL, Sören. **Regional Organizations and Democracy, Human Rights, and the Rule of Law: The African Union, Organization of American States, and the Diffusion of Institutions**. Cham: Springer International Publishing, 2022. (Governance and Limited

Statehood). Disponível em: <<https://link.springer.com/10.1007/978-3-030-90398-5>>. Acesso em: 21 fev. 2024.

STEIN, Robert. What Exactly Is the Rule of Law? **HOUSTON LAW REVIEW**, p. 18, 2019.

STEVES, F. Regional Integration and Democratic Consolidation in the Southern Cone of Latin America. **Democratization**, v. 8, n. 3, p. 75–100, 2001. Disponível em: <<https://doi.org/10.1080/714000210>>. Acesso em: 17 abr. 2024.

TELÒ, Mario. **Multilateralism Past, Present and Future: A European Perspective**. [s.l.]: Routledge, 2023.

VAN DER VLEUTEN, Anna; HOFFMANN, Andrea Ribeiro. Explaining the Enforcement of Democracy by Regional Organizations: Comparing EU, Mercosur and SADC. **JCMS: Journal of Common Market Studies**, v. 48, n. 3, p. 737–758, 2010. Disponível em: <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-5965.2010.02071.x>>. Acesso em: 18 ago. 2023.

VERVAELE, John AE. MERCOSUR AND REGIONAL INTEGRATION IN SOUTH AMERICA. **International & Comparative Law Quarterly**, v. 54, n. 2, p. 387–410, 2005. Disponível em: <<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/mercosur-and-regional-integration-in-south-america/AE389CDAF097F16CF26C376D513F1935>>. Acesso em: 27 jun. 2023.

VIDIGAL, Geraldo. Enforcing Democracy at the Regional Level: Paraguay's Suspension before the Mercosur Court. **Cambridge Journal of International and Comparative Law**, v. 2, n. 2, p. 337–349, 2013. Disponível em: <<https://www.elgaronline.com/view/journals/cilj/2-2/cilj.2013.02.10.xml>>. Acesso em: 25 nov. 2022.

von Bogdandy, Armin, Piotr Bogdanowicz, Iris Canor, Christoph Grabenwarter, Maciej Taborowski, and Matthias Schmidt. **Defending Checks and Balances in EU Member States**. [s.l.]: Springer Nature, 2021. Disponível em: <<https://doi.org/10.1007/978-3-662-62317-6>>. Acesso em: 11 ago. 2023.

WHITEHEAD, Laurence. Regional organizations and democratic conditionality: Family resemblances and shaming. **International Political Science Review**, v. 42, n. 4, p. 546–560, 2021. Disponível em: <<https://doi.org/10.1177/0192512120937474>>. Acesso em: 16 out. 2024.

Argentina de Milei não deve romper com Mercosul, avaliam empresários e especialistas brasileiros. Disponível em: <<https://oglobo.globo.com/economia/noticia/2023/11/20/argentina-pos-milei-nao-deve-romper-com-mercosul-avaliam-empresarios-e-especialistas-brasileiros.ghtml>>. Acesso em: 24 maio 2024.

Beiträge zum ausländischen öffentlichen Recht und Völkerrecht. **Max Planck Yearbook of United Nations Law Online**, v. 5, n. 1, p. 751–754, 2001. Disponível em: <https://brill.com/abstract/journals/mpyo/5/1/article-p751_22.xml>. Acesso em: 11 ago. 2023.

communication-from-the-commission-to-the-european-parliament-and-the-council. Disponível em: <<https://primarysources.brillonline.com/browse/human-rights-documents-online/communication-from-the-commission-to-the-european-parliament-and-the-council;hrdhrd46790058>>. Acesso em: 2 jun. 2023.

Decisión sobre la suspensión de Venezuela en el MERCOSUR. Disponível em: <<https://www.mercosur.int/en/documento/decision-sobre-la-suspension-de-venezuela-en-el-mercosur/>>. Acesso em: 29 mar. 2024.

European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)). Disponível em: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018IP0340>>. Acesso em: 16 out. 2024.

Flaminio Costa v ENEL. Disponível em: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61964CJ0006>>. Acesso em: 15 abr. 2024.

Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part - Joint Declaration on political dialogue between the European Union and Mercosur. Disponível em: <http://data.europa.eu/eli/agree_international/1996/205/oj/eng>. Acesso em: 17 out. 2024.

NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Disponível em: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026>>. Acesso em: 17 out. 2024.

Parti écologiste “Les Verts” v European Parliament. Disponível em: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0294>>. Acesso em: 15 mar. 2024.

Proposal for a COUNCIL DECISION on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law. Disponível em: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52017PC0835>>. Acesso em: 16 out. 2024.

Soft Law. Oxford Public International Law. Disponível em: <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1469?prd=MPIL>>. Acesso em: 1 out. 2024.

TPR Mercosul. Disponível em: <<https://www.tprmercosur.org/pt/index.htm>>. Acesso em: 10 nov. 2023.