

# TRANSNATIONAL DEMOCRACY? A PIECE OF CAKE

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Thinking back, the foundations were always there. It is just that the missing pieces were crucial. But once the pressures from below were channelled into a truly democratic Europe, everyone was the better for it.

29 high-school students, some of the brightest from right across the European Union, are sitting in the local citizen assembly building in Ebeltoft, a picturesque Danish port town located on the Djursland peninsula just a few kilometres east of Aarhus, the country's second city. Elias Dumoulin Marcelino arrived a few days ago from Lisbon to take part in an Erasmus+ civic education workshop. He will be giving a lecture on the recent history of democracy and rule of law. In just a few weeks' time, voters will be heading to the ballot box for the 2049 elections, and he'll be trying to explain the historical significance of that which now seems obvious. Why did it take Europe so long to get to where it is today? Transnational democracy and the protection of the rule of law at the European level – once so remote – are now part of the political furniture. It was all just a matter of will – as soon as there was some momentum, it happened in just a few years.

In the early 2000s, federalists used to say: "Make the EU at least as democratic as its member states." Back then, this mainly meant that citizens should be able to elect the

European Union executive, as Europeans have done for some time now. Today, there are two ballots in the European elections: one to elect the members of the European Parliament and the other to choose a transnational list that determines the composition of the European Commission. Parties now have pan-European programmes and campaigns as well as lead candidates who visit all member states. It might sound petty, but just a few decades ago European elections were all about domestic issues.

## **EUROPEANS WENT ONE STEP FURTHER**

All this sounded quite ambitious in 2019 – almost no one dared to think of a European democracy more democratic than the nation-states were back then. Democracies of the early 2000s were all based on 18th, 19th, and 20th-century rituals, procedures, and frameworks that no longer responded to hyperglobalisation or the new millennium's technological challenges.

The European democracy as it exists today – representative and deliberative – seemed

almost unimaginable. All difficult decisions are now worked on for months by citizens themselves, not just by unelected experts who think they know better. Europeans come together in citizens' assemblies, fora to deliberate over all kinds of issues: from corruption and climate change, to constitutional questions and infrastructure projects. Not limited to in-person gatherings, thanks to communication and translation software, everyone can participate in real time. These transnational assemblies of European citizens work on all matters of public interest. First, they prepare a list of recommendations for their representative institutions, and then, once there is a satisfactory law on paper, they disband.

## THE POWER OF SOCIAL PRACTICES

An important step towards our transnational human rights regime was the step-by-step creation of social practices. The work of NGOs, foundations, and even governments in the EU created the necessary conditions for rights' defenders to be able to litigate in the Court of Justice, the same way as they used to litigate in the European Court of Human Rights. Once civil rights organisations discovered the Charter of Fundamental Rights of the EU and started going to the European Court of Justice to protect the rights therein, member states inevitably changed their attitudes towards their own citizens and afforded more respect to their established rights.

An important milestone in this process was the creation of the European Civil Liberties Union, a pan-European human rights association. Today millions of citizens are card-carrying members and support the organisation through membership fees. This Civil Liberties Union sends complaints to the national courts, which can go all the way up to the Court of Justice of the European Union. One of their landmark cases was *Simon vs. Hungary*, in which the Civil Liberties Union represented the Hungarian high-school student Kristina Simon, who had criticised her government in a speech at a rally in her hometown of Pécs in south-western Hungary. In retaliation, she was expelled from school, national media outlets published articles about her poor grades and frequent absence from school – even some of her private communications made it into the press. The government went as far as to make a reference to her case in its national consultation. Sent to 8 million people across the country, the survey cited her example to ask whether there was need for more discipline in schools.

The court ruled in favour of Simon. But more importantly, her case highlighted the Hungarian government's disregard for human rights and the story of a teenager under attack from her own government sparked a wave of international solidarity. The Hungarian government found itself isolated and was forced to cooperate with the opposition and civil society on new legislation to prevent such things happening again.

“The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.” – Preamble to the Charter of Fundamental Rights of the European Union.<sup>1</sup>

## THE WISE PEOPLE OF EUROPE

To monitor the overall situation with the rule of law, European politicians have created a wise persons’ committee: the Copenhagen Commission. This new body is tasked with evaluating, assessing, and ensuring the continuity of the Copenhagen criteria after a member state has entered the European Union.<sup>2</sup>

Once the members of the commission find problems in the field of rule of law, human rights or democratic values in an EU country, their task is to hit the alarm button. And when this institution – which works closely together with the Agency for Fundamental Rights but is independent from EU institutions and governments – raises the alarm, their preventive

judgments have a high level of credibility. Thus, member states can no longer argue that they are being singled out for political reasons.

30 years ago, it was the European Parliament that carried out this kind of work, as it did in the cases of Hungary and Poland. However, the European Parliament is a political institution: national governing parties belong to pan-European parties, who tended to defend their own people when push came to shove. In those days, gentlemen’s agreements between party families in the European Parliament often resulted in inaction, and the Commission and the Council were similarly paralysed.

## SUING YOUR GOVERNMENT

To make democracy truly transnational, the people of Europe also had to take ownership of the Charter of Fundamental Rights of the EU throughout all jurisdictions. This document included 50 articles and contained some of the most advanced protections of human rights – from privacy and the environment to labour and property rights. But there was one major problem: the charter’s Article 51 limited its application to the European scale, and therefore it could not be used inside a member state’s juridical system.

A group of visionaries set about to overturn this situation. Among them was the Greek

<sup>1</sup> The Charter of Fundamental Rights of the European Union gained legal effect with the Treaty of Lisbon in December 2009. It was the most developed and comprehensive legally binding human rights instrument in the social field of the European Union, and the first instrument that included both civil and political rights as well as social rights.

<sup>2</sup> The Copenhagen criteria, or accession criteria, are the conditions all candidate countries of the EU have to satisfy. In 2019 they only applied to candidates, and therefore lots of member states started to backtrack once they had joined. The criteria include measures concerning the stability of democratic institutions, the protection of minorities, and a functioning market economy.

lawyer and co-founder of the European Civil Liberties Union Yannis Rovithi who started a campaign to abolish Article 51. Peaceful demonstrations in which students, farmers, blue- and white-collar workers expressed their desire for a European human rights framework quickly spread from Thessaloniki and Athens to other European cities (there were even some village communities that staged their own protests instead of joining rallies in the cities). Soon politicians and national governments realised that there was no way around this popular desire. Article 51 was scrapped through a unanimous decision in the Council of the EU. Today, European citizens, and other people covered by the charter – such as refugees and foreign residents – can turn to any court, national or supranational, to enforce their rights, and they can directly sue member states for their offenses and even EU institutions when they fail to act.

## A TRANSNATIONAL POLITY

It was not so terribly hard to introduce all these changes. In hindsight, one could even say that it was a piece of cake. But to get to there, Europeans needed to completely change their mindset. Throughout European history (and well into the 20th and early 21st centuries), thinkers have pushed their ideals into the far future. When Immanuel Kant wrote about cosmopolitan democracy, he implied that it might take generations for people to have rights beyond borders.

Fortunately, there were some visionaries who realised that, at the turn of the 2020s, Europe and the world were entering a different stage of history. Tensions in international politics, ecological crisis, as well as the pressures that technology and artificial intelligence put on European politics, all pointed to the need to forcefully build transnational democracy.

It is probably safe to say that, had they not created a transnational polity with fundamental rights and vigorous democratic values, the European Union would have either disintegrated or at least gone through seriously turbulent times. But they made it, and today's transnational European space of democracy and human rights is not just an empty shell; its value and importance are self-evident in the everyday lives of its citizens.



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