Critically Evaluate the Role of Article 7 TEU in EU Enforcement

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***Introduction***

The European Union EU is the body of a council where the Member States work together to form a peaceful pact of homogeneity. In the EU, every country works together under a shared bond of goodwill and mutual respect, so that each member state can benefit one another in the council. The factor of trust plays an important role so that a strong bond among the members can be established under the umbrella of the European Union. The article 7 of the Treaty of European Union plays a vital role to ensure that all the rules and statutes of the EU are being followed and executed. Moreover, it ensures that all the members of the Council are following the decisions that are made by the Commission and Parliament of the Council. This Article is mainly invoked when human rights are violated as will be discussed below. European Union has always put a huge emphasis on human rights and has been providing sanctuary to 120 million people each year. Violating the basic rights of migrants and certain ethnic groups has pushed the Union to invoke Article 7, especially against Hungary.

***Article 7 History***

 The Treaty of Lisbon played the main role in the making of the European Union as this treaty replaced many other treaties that were less general[[1]](#footnote-1). The members of the Union, however, knew from the start that a unifying principle is needed to ensure long lasting cooperation; one that will ensure their equality in the Union and make the integration of member states stronger. The values followed by the member states ensure the European Identity of the members and makes it possible for the states to follow democratic values. Article 7 of the Treaty of European Union ensures that all member states are following the treaties and statues of the Union. If not then Article 7 will suspend the membership rights of any Member State.

The Amsterdam Treaty was used as a pillar for the establishment of Article 7, but it has never been used or sanctioned. In 2004, the procedures and mechanisms of Article 7 were used in Austria when Jorg Haider and the Freedom Party came to power at the start of the 21st century. In the end, 14 member states of the Union imposed bilateral sanctions on Austria and the procedures under Article 7 were never imposed. After that, the constitutional reforms in Hungary and the impeachment of the president of Romania were strongly criticized by the European Union[[2]](#footnote-2). Furthermore, both of these actions were scrutinized by the laws and rules of the Treaty of the European Union. Moreover, Polish laws and amendments have recently been condemned in the Union and have been under strong scrutiny[[3]](#footnote-3). The European Union has started its procedures under the Rules of Law Framework before the Union can take one step further and invoke Article 7 of the Treaty of the European Union.

European Union and its statutes ensure that all political leaders of the Member States which are constitutional, abide by the rules and regulations of the Treaty of European Union. The choices made by the political leaders, however, sometimes, come in contrast with the values of the EU. This makes it difficult for the Member States to follow all the regulations of the Union. Many Member States tend to oppose developments and steps that are taken by a certain Member of the Union and try to invoke sanctions that at times are deemed unnecessary by the Parliament and Commission. It is a known fact that political ideologies, leaders, cultures, norms, constitutions do no match or remain the same and change over time. There is no simple and single structure of democracy present for a country to follow.

The members of the EU, therefore, allow diversity in the values and views the members have in the European Union. Respecting the ideology of all members, the legal system of the EU upholds local laws to minimize any room for discrimination. The Court of Justice of the European Union defines the legal system and takes all precautionary actions before any member states violate the values of the EU. However, there is still a division between the members of the EU[[4]](#footnote-4). Some are of the view that EU intervention should be legitimized to ensure a complete politicization of the EU, so that democratic values can be rendered safe. This diversity was very important in the EU so that each Member State can put forth all the concerns it might have and can be addressed without any discrimination. A Union scrutinizing its members and enforcing sanctions speaks all about the transparency and standard that the Union has set so that the basic fundamental rights of States and individuals are safeguarded.

***Preventive Procedures***

The procedure to impose sanctions on a member was provided by the Amsterdam Treaty and the complete mechanism and rules on how to impose those sanctions were made possible by the Treaty of Nice[[5]](#footnote-5). This allowed the EU to take action against any member state before the values of the EU were breached. This step of the EU, however, was deemed unprecedented. Article 7 of the TEU allows the Council to determine whether a member of the EU has violated the rules, laws and the values of the European Union. However, the member state being under scrutiny can share its share of recommendations to the Council so that the process of scrutinization can be processed without any discrimination. After that, the Parliament has to take action and make a decision. The Council then has to issue orders in light of the consent of the Parliament. The Treaty of Nice has allowed the European Union to adopt the preventive phase so that risks of violations of values and rules can be avoided before a complete breach.

Treaty of European Union under the Articles 7.2 and 7.3 allows the European Union to utilize the Sanctioning Mechanism when a member state has been found in continuous breach of values and rules of the Union. Sanction Mechanism can be either invoked by the Commission or by a one-third majority of the Member States. This is followed by sanctions that are imposed by the European Council and the Council can change or modify the recommendations at will[[6]](#footnote-6). This can be done since the member state being scrutinized has no power whatsoever in this regard. Singular violations of laws, values and fundamental rights are not enough for the European Union to invoke Article 7. It should only be used as a last resort when the Council and Parliament can establish that violation of values is consistent and systematic. At an individual level, legal routes can be utilized through national courts and following the charter of the European Court of Human Rights. Breaching of values and norms can be measured by dire cases of human rights violence and crimes committed against any ethnic group.

***Effects***

Many political leaders and workers are sceptical about Article 7 being invoked against any member state as it is termed as a direct attack on the sovereignty of a nation. The citizens also oppose such sanctions and any intervention in their country's political circle as they think that these sanctions are a direct attack on the population and not on the government. This stance is however countered by the Austrian incident where sanctions were imposed on the Austrian government by 14 Member States. This did not make the population rogue and instead made things better for the nation. This happened because the government was forced to take certain steps and formulate policies that were productive for Austria and the European Union.

Invoking the 7th Article is not an easy task as it requires a majority in both Parliament and the Council as well. Member States also do not favour taking actions against any other Member as it will make their position weak both politically and democratically[[7]](#footnote-7). All the Member States are stakeholders in the EU and tend to have strong relations with each other. Solving issues and any misunderstanding through back door diplomacy is much appreciated among them in most of the situations. In many cases, Articles 258 and 259 of the Treaty of European Union are invoked and suggested instead of Article 7. Many questions were raised to understand the importance of Article 7 and how an alternate Article can be utilized whenever EU values are breached. Only the treaty of Lisbon suggested the use of a legal approach to address the breaching of values. While all other Treaties led to political solutions and suggested that European Union norms were not under the jurisdiction of the Court of Justice.

The deficiencies of the current institutional courses of action to uphold the Union's crucial esteems have progressively been the subject of analysis. Including numerous requests for increasingly adaptable instruments as a centre ground elective between the 'delicate intensity' of political influence and the 'atomic choice' of Article 7 of the Treaty of European Union. The First Vice President of the Commission, Frans Timmermans, responsible for ensuring rule of regulation inside the Commission, has featured that certain issues and cases do not fall under the umbrella of Article 7 and hence cannot be scrutinized and cannot be said to meet the limit of Article 7[[8]](#footnote-8). Moreover, these cases might raise concern to the regard of the standard of law in a specific Member State. The proposed arrangements wander, as they incorporate new or altered methods for the assurance of EU norms and values, adopt a legitimate or political strategy, support ex-risk or ex-post activities and depend on their authorization to EU bodies or autonomous specialists.

***Copenhagen Commission***

The subject of a particular professional body at European Union level completing methodical checking of Member States consistency with the European Union norms and esteems was broadly examined when the Agency for Fundamental Rights was established. At last, the FRA was not endowed with methodical observing of Member States for the motivations behind Article 7[[9]](#footnote-9). Its help could be looked at by the political entertainers occupied with an Article 7 process, to set up whether there is an industrious, genuine rupture of EU norms or danger of breaching EU values is imminent by any of the Member States. On the other hand, scholar Jan-Werner Müller recommended setting up a politically free and a professional body, to be known as the 'Copenhagen Commission', to screen and research the circumstance of vote based system and rule of law in the Member States.

The Copenhagen Commission can independently provide a set of proposals, the European Commission could cut EU assets and funding's for the Member State in address or force fines and other economic sanctions. Many political commentators contended for a more grounded association of the Council of Europe Venice Commission. Accepting that the Article 7 Treaty of European Union instruments is not limited when there is an inquiry of the break of European Union values. Scholar Kim Lane suggests employing the encroachment methodology of Articles 258 and 260 TFEU, packaging together some very specific sets of violations and infringements[[10]](#footnote-10). Many commentators have recommended in this setting the Court of Justice has the option to suspend EU financing rather than forcing a fine or a single amount to be paid by the Member State being referred to.

As a supplement to existing methods, researchers have suggested building up another preventive component, which could suspend challenged national strategies and work on falling inside the dispatches of European Union regulations. The system would be enacted depending on testimony given by the FRA and would involve quickened encroachment strategies. The government has assumed an inexorably significant job in the implementation of European Union values and norms. It is on an equivalent balance with the Commission and the Member States with respect to activating the preventive mechanism of Article 7.

Besides, it has supervision over the Council, through the assent methodology, in the assurance of whether a genuine rupture of the basic esteems exists, or there is an unmistakable danger of breach of EU values and norms. It has embraced many declarations stating that each member of the Union must respect the values and norms, and make sure that all states are abiding by the decorum that is inscribed by the EU. More emphasis is put on human rights and equality as it is evident that human rights violations and institutional corruption followed by undemocratic policies will force the EU to invoke the 7th Article.

***Recent Development***

European Union has been a champion of democracy since its formation and all member states of the Union follow the rules of democracy as well. However, one of the members has started to breach the values and standards that were set by the Union and its past leaders[[11]](#footnote-11). Right after coming to control, the Nationalist Law and Justice party, in October 2015, has bit by bit expanded its hang on the nation. It has just put cohorts in the military, ministries and civil institutions and state-possessed organizations, and is currently politicizing the legal executive. Members not abiding by the rules and norms will demolish the basic foundation of the European Union.

In light of the thriving illiberalism of European leaderships including Hungary, the EU received a structure for ensuring the standard of law in 2014. Article 7 of the Treaty of the EU enables it to train a state when there is a "reasonable danger of a genuine break" of the coalition's virtues. In the most doubtful scenario, a nation's democratic right to vote can be banned. By and by, as Poland's case appears, the procedure is not standard. More than two years have gone since the European Commission pushed a test into the standard of laws and regulations in Poland. European Union invoked Article 7 in December of last year, indicating a reasonable danger of a genuine break of the standard of regulations and law in Poland. However, Warsaw has declined to back out, simply modifying its dubious legal and judicial changes.

To continue with Article 7 and make steps towards halting and banning Poland's democratic rights, the commission needs the help of four-fifths of part states. In any case, that will be a hard task to achieve while France and Germany might bolster activity and carry on with the sanctions, numerous others are hesitant to start a trend. In the wake of scrutinizing the Polish government on its legal changes on June 26th, EU nations deferred their choice[[12]](#footnote-12). For the first time, the EU has taken action against the new government of Poland and threatened to completely ban the rights of Poland as a member state of the European Union. The hearing in Luxembourg forced the Polish administration to amend its new reforms and make the judiciary of the country completely independent from politics. Just by lowering the retirement age of the Supreme Court judges, the Court of Justice has ruled against the Polish government. Also in this regard, the European Union has volunteered to support the new Polish government with new resolutions so that issues at hand can be taken care of without provoking Article 7 at full.

The scope of Article 7 has not been decided or defined in any book of law but one thing that all states adhere to is that the Member States should solve issues and reform their policies before the European Commission is forced to take action by invoking the 7th Article[[13]](#footnote-13). There have been many instances where scholars and commentators have provided their views on forming other mechanisms or alternatives of Article 7. The utilization of normal and simple Union law intends to address the concerns to the rule of law and regulation. Rather than the Article 7 procedure, which could be a method for tending to those worries by traditional methods, given that some see Article 7 as an atomic bomb.

There is no doubt in the fact that it has its favourable circumstances contrasted with the Article 7 procedure, as it stays away from the noticeable hesitance of Member States to condemn each other in that certain circumstance. Its utilization as a course to guarantee the standard of law is reinforced by the CJEU's eagerness to attest purview over worries about legal freedom all the more comprehensively. Be that as it may, outside explicit connections with EU law and the issue of legal freedom, it may demonstrate hard to utilize the standard European Union lawful framework. The framework will not be able to manage various worries about the political framework in a Member State other than those disputes.

There is additionally a hazard that once national courts are pressed, it's past the point where it is possible to anticipate that they should send inquiries to the Court of Justice. The Commission can at present execute encroachment activities; however, these have a less immediate effect on the state's lawful procedure. What's more, the Commission could thus be 'caught' by those respectful to leaderships. The European Parliament has made various recommendations to fortify the assurance of crucial rights in the EU by proposing new systems and strategies to fill the current holes.

In its latest content embraced regarding the matter, Parliament united its previous recommendations and required the foundation of an 'EU component on vote based system, the standard of law and basic rights.’ They would be founded on a Union Pact appearing as an interinstitutional concurrence with the Commission and the Council[[14]](#footnote-14). This would incorporate a yearly approach cycle dependent on a report drafted by the Commission and by a specialist board. The board should be trailed by a parliamentary discussion and joined by courses of action to address dangers or breaches to the EU values and norms.

With the decision made against one of the members of the Union, it is evident that the EU needs more power to scrutinize its Member State. Furthermore, once in the near future, the EU must use its power to fully exercise the 7th Article of TEU so that its legality and repercussions can be determined. Poland still has to comply and take necessary actions to prevent further sanctions issued against the newly elected government. It is a great gesture by the EU to provide its assistance to the Polish Government which speaks volumes of the importance given to values and standards of law that are set by all the Member State.

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