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Judges, rulings and freedom of expression: a matter of framing.

On 5 May 2020, Germany's Federal Constitutional Court of Karlsruhe passed a shock ruling; then, on the following 31 July, the German Federal Ministry of Finance issued a letter stating that the European Central Bank's purchase of Government bonds met the principle of proportionality. The German top court had clearly casted doubts as to such operation, claiming that it disregarded the sovereignty of the German state. One might argue that it was not up to the Government to take a stance, rather to the judge in Karlsruhe – but that's besides the point. The shock ruling of 5 May also saw Andreas Vosskuhle (President of the Federal Constitutional Court), step down as his term expired. **It all made a lot of noise, for such ruling truly shook the Eurozone at its core**, because – quoting Professor Franz Mayer of Bielefeld University – “*the Court has detonated an atomic bomb*”, and because – quoting Professor Peter Meier Beck, presiding judge at the Federal Constitutional Court – it was “*an attack on the European Union as a legally constituted community of European democracies*”. Bottom line: the ruling was, quite blatantly, a populist one (the term ‘populist’ being used for the sake of simplification, seen as ‘populist’ is currently a very widespread word).

The ruling can be labelled as such owing to its straightforward, almost violent approach to the European Court of Justice, which in 2018 took a stance on the very same point: the judges in Karlsruhe thought they held the power to challenge and nullify the decision passed by their colleagues in Luxembourg, claiming that the task of monitoring compliance with the principle of proportionality falls within the jurisdiction of domestic Courts, **thus questioning the whole euro-unitary system of sources**, tirelessly built around the *primacy of EU law* and jeopardising the independence of the European Central Bank, whose actions had supposedly overstepped its bounds. The will of the German judges surreptitiously brought back the final decision concerning monetary policy within the domestic framework, paving the way for potentially disrupting consequences for the future of the Euro.

In a nutshell, the reasoning of the ruling is based on the postulate of internal sovereignty (considered the only context where democracy may legitimately unfold) ultimately gaining the upper hand over the supranational sphere.

Interviewed by Anna Schenider [source: Neue Zürcher Zeitung's tweet of 31 May, 2020, 7:58 am], judge Vosskuhle conceitedly commented on the aforesaid situation as follows: “*was sein muss, muss eben sein*” (“**what has to happen,**

must happen”), referring to the German government’s purchase of Government bonds as part of the Quantitative Easing programme (the instrument which many claim saved the Euro following the crisis of 2011).

“*Was sein muss, muss eben sein*”, but the ruling is far too important for Europe to disregard it as it shallowly neglected the Hagia Sophia case with Ankara or the Nantes Cathedral fire. So let’s go back to the powerful president, who is about to resume teaching General Theory of the State and Legal Philosophy at Freiburg University. He is said to be close to a political party (the declining SPD) and there are rumours as to him running for the (slightly more than symbolic) Presidency of the Federal Republic.

But again, that’s besides the point. The point is actually **freedom of expression; more precisely, a judge’s freedom of expression when being interviewed**. Years ago, someone came up with the theory that, for a judge, corruption (obtaining a favour in exchange for money) is less dangerous than the vanity of appearing in public, being interviewed, being a celebrity and acclaimed. Well, the outstanding professor had previously spoken in public while being a constitutional court judge, uttering dense and meaningful words that inevitably drew attention, for example on 23 November, 2017, when interviewed by the Frankfurter Allgemeine Zeitung (interview published on page 6). What he said back then too overstepped the merely technical boundaries; indeed, his sharp words openly condemned populism (“*it expresses a political approach, based on which a morally pure people is supposedly confronted with amoral, corrupt and parasitic elite groups*”). Not only did those words go beyond the technical sphere: **they touched the very limits – perhaps overstepping them – of a constitutional judge**, as he mentioned political sides, freely elected and represented in Parliament, describing them as “*entities that despise the constitution*”.

Nonetheless, it is not worth thinking about his definition of populism (which does not match that of Heribert Prantl or Ralf Dahrendorf), nor about the ruling *per se*. Our thoughts should rather focus on the hiatus: he firstly contextualised the pathological phenomena of populism (November 2017) but then, in terms of actual facts, with his ruling (May 2020) he supported those populist impulses. On top of that, he commented with arrogance on the perplexities such ruling aroused, perhaps because **he created his own niche in the correct frame**. The thing is, despite the recent populist ruling, he had the brazenness to criticise Hungary and Poland (evidently placed in the wrong frames), owing to their inadequate preservation of the Rule of Law.

A parallelism springs to mind when thinking about the relations between the United States and China. Trump is fiercely criticised for being a boorish populist whenever he complains about the imbalance existing in US-China relations. So far, so good. But if a **very similar concept is raised by Dani**

Rodrik, Professor of International Political Economy at Harvard University, then the public opinion goes silent and the concept no longer sounds populist [for further reading on the subject see the following article [Al fianco dei lavoratori e contro il global-capitalismo cinese. Ma Trump è di sinistra?](#) dated 10 October, 2018]. This lecturer claims that **the attempt to remove all barriers to goods (and migrants) risks failing, especially in view of manifest exploitation of underpaid labour (social dumping)**. Likewise, Rodrik takes cue from the situation in Qingdao port to assert that China systematically violates the spirit, if not the letter, of WTO rules. So? Are these words no longer populist if pronounced and written by a lecturer of Harvard's School of Government? Is it just a matter of frames?

But if that were so, **if a preliminary assessment precedes the actual facts**, it would be impossible to evaluate things for what they truly are, and problems will never be solved. When faced with the stark truth, it's the quality of the idea that matters, not a pre-packaged assessment. Any initiative (such as the recent appeal of US scholars on Harper's Magazine) that aims to curb the intolerance of *a priori* evaluations is therefore welcome.

This is exactly what the *framing* issue is about: the frame in which the image of the character is created. Regardless of the contents, of the content quality, of what is said and done, **the frenzy of this technological era favours quick thoughts** and expresses hasty opinions based on *a priori* elements as to the political correctness of an idea. If the *singer* is famous and successful, then the *song* can and must be popular. If, on the other hand, the *singer* has fallen into disgrace, or is not properly framed, then the *song* is doomed to be, *a priori*, a fiasco and bound to be forgotten.

This *a priori* framing **conceals the risk of a dramatic intolerance**, which in turn may lead to the triumph of a nihilist *cancel culture*.

Freedom of thought and freedom of expression must be safeguarded, before we end up gathering in the woods, like the heroes of Roy Bradbury's novel, *Fahrenheit 451*.