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62nd London-Leiden Conference – 23 June 2023

Unity in Diversity: Promoting and Defending the Rule of Law as a Foundational Value in the EU and UK

Event Summary¹

The 62nd London-Leiden Conference, held on June 24, 2023, aimed to explore the theme of "Unity in Diversity: Promoting and defending the Rule of Law as a foundational value in the UK and EU." The Conference is part of a series of annual events organised by the Europa Instituut of the University of Leiden and the British Institute of International and Comparative Law, discussing developments in European Law. Speakers and attendees at the Conference addressed the role of the Rule of Law as a foundational value in Europe and in the UK across several policies and legal areas.

The conference consisted of three sessions, each addressing different aspects of the Rule of Law.

Session 1: The Rule of Law as a Foundational Constitutional Value This session focused on fundamental constitutional principles that underpin European liberal democratic states. It discussed the role of the Council of Europe and the EU in upholding the Rule of Law, exploring how these institutions have evolved in recent years. Additionally, the session highlighted the ongoing research of the ELI (European Law Institute) project, which examined the tenets of the Rule of Law in European liberal democracies and the standards that countries should observe.

Session 2: The Rule of Law Dimension across EU Policies The second session delved into the Rule of Law's dimension across various EU policies. Speakers discussed

¹ This report was prepared by Sarah Boxer and Thenu Herath, Research Interns in International Law, BIICL and Dr Julinda Beqiraj, Senior Research Fellow in European Law, BIICL. A special thanks to Dr Jean-Pierre Gauci for preparing the transcripts of the event.



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challenges and adaptations related to the rule of law in Europe and the UK, regarding topics such as EU external relations, migration law, compliance with rule of law standards during emergencies, AI regulation developments, and youth engagement with the rule of law and democracy.

Session 3: The Rule of Law and Judicial Independence The third session focused on the crucial aspect of judicial independence as an essential component of the rule of law. Panelists discussed the challenges to judicial independence in European countries, taking into account relevant case law from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The importance of an independent judiciary, both externally and internally, was emphasized, and specific cases related to the CJEU, and the operation of the judiciary in Poland, Romania, and Albania were examined.

The conference featured eminent speakers who are experts in their respective fields, including academics, researchers, and legal professionals. The event aimed to foster a comprehensive understanding of the Rule of Law, its application in different policy areas, and the challenges associated with its implementation in Europe. By exploring these topics, the conference sought to contribute to the promotion and defense of the rule of law as a fundamental value in the UK and EU.

Introductory Remarks

Prof. Spyros Maniatis

Director of the British Institute of International and Comparative Law (BIICL)

Prof. Sir David Edward

Honorary Fellow of University College, Oxford, Professor Emeritus at the School of Law, University of Edinburgh

Dr. Julinda Beqiraj

Maurice Wohl Senior Fellow in European Law, Bingham Centre for the Rule of Law, BIICL

The 62nd session of the London Leiden conference commenced with opening remarks by Prof. Sir. David Edward - a long-standing supporter of the conference and former judge of the CJEU (1992-2004) - and Prof. Spyros Maniatis, the Director of the British Institute of International and Comparative Law. They expressed gratitude for the attendees' presence and highlighted the conference's long-standing tradition of



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addressing fundamental legal and societal questions. They both acknowledged the challenges Europe has faced and emphasized the conference's role in fostering intellectual connections between the UK and the rest of Europe.

As co-organiser of the Conference alongside Prof. Margot Horspool, BIICL Honorary Fellow in European Law, Dr. Julinda Beqiraj, Maurice Wohl Senior Fellow at the Bingham Centre for the Rule of Law (BIICL) provided additional context for the conference. She emphasized the importance of the rule of law as a core value and its relevance in both EU member states and the UK, as well as the important challenges to the principle in practice - be they in relation to classic well-established components of the EU *acquis*, access to justice and judicial independence, or when European law expands to new fields such as AI. Despite departure from the EU, effectively as of 1 January 2021, the UK continues to be committed to the rule of law as a core constitutional principle, but it is also faced with similar challenges.

The conference's structure was outlined, with various sessions addressing topics such as European foundational constitutional principles, global dimensions across EU policies, rule of law and judicial independence.



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Session 1: The Rule of Law as a Foundational Constitutional Value

Moderator: Prof. Sir David Edward

Honorary Fellow of University College, Oxford, Professor Emeritus at the School of Law, University of Edinburgh

The conference's introductory session focused on democratic processes and the rule of law. The speakers discussed fundamental constitutional principles which form the foundations of European liberal democratic States. Speakers discussed the capacity of the Council of Europe and the EU to uphold the rule of law and how this has changed in recent years. The theme was addressed in the light of the research carried out and the findings of an ongoing ELI project regarding the tenets of the rule of law as understood in European liberal democracies as well as standards to be observed by those countries.

Prof. Takis Tridimas, *Director Centre for European Law, King's College, London*

ELI project on Fundamental Constitutional Principles of European Liberal Democracy – Findings of the Working Group.

Prof. Tridimas discussed the ELI project and the [findings of the working group](#) summarised in a report. The project, commissioned by the European Law Institute, aimed to draft a report in the form of a charter that identifies and articulates the constitutional principles and standards underlying a European liberal democratic state. The report has both a descriptive and prescriptive character, describing the fundamental constitutional principles as understood in European democracies after World War II and articulating the expected standards of a genuine liberal democracy.

Prof. Tridimas emphasized the need for restating constitutional values to combat complacency and the potential regression of democracy. He highlighted the decreasing number of countries classified as liberal democracies and the challenges posed by populism, media manipulation, and fake news. The report integrated 36 principles related to governance, rights, liberal democracy, the rule of law, judicial independence, checks and balances, accountability, dignity and equality, protection, fundamental rights, and constitutional integrity.

The starting point of the report is that a liberal democracy is governed by values such as respect for human dignity, democracy, the rule of law, ecology, and fundamental rights.



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Prof. Tridimas clarified that the term "liberal democracy" does not indicate a partisan preference but rather refers to an ideology, a system of governance, and a political culture.

Prof. Tridimas noted the ongoing consultation process with various organizations and invited feedback on the report, which is scheduled to be submitted to the European Law Institute at the end of August. Overall, the report aims to contribute to the contemporary public debate on the design and enforcement of constitutional values in Europe, addressing challenges posed by populism, media manipulation, and the need to safeguard democratic principles. Prof. Tridimas emphasized the need for vigilance and engagement with the principles of liberal democracy, as this type of regime is more likely to lead to peace and prosperity.

Prof. Rick Lawson, Leiden University Law School (online)

Two Guardians, One Treasure: The Council of Europe, the EU and the Rule of Law

Leiden University Law School Professor Rick Lawson's presentation focused on the theme of protecting the rule of law in Europe. Although unable to attend in person, he expressed his regret and recalled the sense of family reunion that these annual meetings have fostered in the past. His intervention aimed to serve as a bridge between Tridimas's conceptual presentation on the findings of the ELI report and the subsequent panels' discussions on substantive elements of the rule of law.

Prof. Lawson delved into the role of two key organizations in protecting the rule of law in Europe: the European Union and the Council of Europe (CoE). He also highlighted the role of the CoE Venice Commission, known for shaping and giving substance to the rule of law. He mentioned their reports on Poland, which unfortunately fell on deaf ears but effectively captured the notions of decency and moderation that are integral to the rule of law.

The speaker turned his attention to the European Court of Human Rights, emphasizing its significance in safeguarding judicial independence. He noted that while the court had referenced the rule of law as a foundational value in the past, its response to recent rule of law crises in Poland and Russia had been delayed. The court's lack of intervention during crucial periods raised questions about its effectiveness as an early warning system.



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Professor Lawson then shifted focus to the European Union's efforts in protecting the rule of law. He mentioned the conditionality regulation of 2020, which provided a legally binding definition of the concept. He acknowledged the disagreement from Hungary and Poland but highlighted the strong judgments on the rule of law by the Court of Justice of the European Union, affirming the importance of compliance with EU values.

The speaker posed a key question for debate: to what extent can the values contained in Article Two of the European Union Treaty serve as grounds for independent action when these values are under attack? He referred to ongoing infringement proceedings against Hungary and Poland as examples. He also mentioned other initiatives such as the Defense for Democracy package and the adoption of a new strategy by the EU Fundamental Rights Agency, reflecting growing concern for the protection of the rule of law.

In conclusion, Professor Lawson invoked Winston Churchill's words, urging decisive action in the face of threats to the rule of law. He emphasized that the EU and the Council of Europe must not repeat the failures of the past and should act resolutely to preserve the rule of law in Europe.

Q&A

- [How important is the position of lawyers in promoting and defending the rule of law as an essential principle?](#)

Prof. Tridimas acknowledged the significance of lawyers and mentioned that there was a passing reference to their importance in the ELI report. However, he noted that feedback had been received, suggesting that more emphasis should be placed on the role of lawyers in upholding the rule of law.

Professor Rick Lawson mentioned the organization Lawyers for Lawyers, which advocates for the protection of lawyers who face pressure and sanctions for defending dissidents or opponents of the government. He highlighted the crucial role lawyers play in a democratic state governed by the rule of law and recommended referring to the guidelines developed by Lawyers for Lawyers when developing a project.



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In response, Prof. Tridimas acknowledged the importance of lawyers' freedom to exercise the power of legal representation without suffering consequences. He referred to instances of lawyers supporting Russian interests facing extensive abuse and highlighted the need to address such challenges. He also discussed the difficulty individuals face when taking on the state, even in countries with strong legal traditions, emphasizing the need for access to justice and legal aid.

➤ [What is the distinction between open government / governance and transparency?](#)

Prof. Tridimas explained that open governance is more of a standard, while transparency can involve specific obligations. He outlined four sub-principles related to open governance, including openness in conducting public functions, transparency in decision-making processes, stakeholder participation, and access to documents by individuals and legal entities.

➤ [How can we explain the inconsistency of responses by the European Commission and the CJEU, depending on the case? \(Example provided of Hungary's LGBT law versus its response to the Romanian case and the C-56 case in Hungary\)](#)

Prof. Lawson acknowledged the criticisms and presented four arguments in defense of the Commission. He mentioned that the Commission was early in initiating dialogue with Poland, but faced limitations due to the lack of political will among member states. He also highlighted the limitations of the Court of Justice in effecting change on the ground, and the challenge of finding a solid legal basis for the Commission's actions.



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Session 2: The Rule of Law Dimension Across EU Policies

Moderator: Dr. Anna Krisztián, *Leiden University Law School*

Session 2 highlighted the importance of the rule of law in various policy areas and the need to address challenges and ensure its protection in crisis and emergency situations, as well as in the context of emerging technologies like AI. The speakers emphasized the need for legal systems that balance the power of governments with the protection of fundamental values and called for a culture of rule of law and transparency in society.

Dr. Joelle Grogan, King's College London and CEU Budapest
Rule of Law Challenges in Europe and the UK, and Adaptations to Future Crises

Dr. Joelle Grogan started the session by highlighting the global decline of rule of law compliance and the increasing trends of democratic deconsolidation. She emphasized that crisis and emergency situations, such as the COVID-19 pandemic and migration crises, accelerate pre-existing trends but do not cause democratic decline. Dr. Grogan identified two key challenges for the rule of law: the "law problem" and the "rule problem."

The "law problem" refers to the tension between giving governments the power to act swiftly during emergencies while maintaining legal certainty and avoiding abuse of powers. Dr. Grogan stressed the need to design legal systems that balance the need for quick action with the protection of fundamental values. She also emphasized the importance of inculcating a culture of rule of law throughout society and instrumentalizing the rule of law in emergency preparation and response.

Ashley Winton, Partner, AI and Innovation, Mishcon de Reya LLP
Is the Rule of Law protected by the EU or UK approach to AI regulation?

Ashley Winton focused on the impact of artificial intelligence (AI) on decision-making in the context of the rule of law. He discussed various examples of AI systems being used to make decisions, such as determining student exam results, facial recognition technology, and automated decision-making in tax matters. He highlighted the legal implications of AI systems, including the right to a fair trial, data protection, and non-discrimination. He mentioned the AI Act and its broad definition of AI, as well as the need to address human agency, oversight, privacy, governance, and transparency in AI systems.



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Prof. Roman Petrov, Jean Monnet Chair in EU Law, National University of Kyiv-Mohyla Academy and British Academy Research Fellow, BIICL (online)
The Rule of Law in EU External Relations

Prof. Roman Petrov joined the session virtually, discussing the rule of law in EU external relations, both domestically and externally. He highlighted the EU's role as a global promoter of the rule of law and emphasized the significance of Article 2 and Article 21 of the Treaty on European Union, which outline the EU's objective to promote its common values, including the rule of law, externally.

The speaker discussed three key means through which the EU achieves this objective: EU external agreements, EU external policies, and the enlargement process. Regarding EU external agreements, Prof. Petrov mentioned various types of agreements such as trade and development agreements, partnership and cooperation agreements, and association agreements. These agreements emphasize the importance of European common values and the rule of law as essential elements, with provisions allowing termination if any party violates the agreement.

In terms of EU external policies, he highlighted the significance of the European Neighborhood Policy, the Union for the Mediterranean, and the Eastern Partnership. These policies emphasize the rule of law and the sharing of common values, with the EU providing assistance and integration opportunities to countries conditional on their democratic reforms and adherence to the rule of law.

The enlargement process was also discussed, with a particular focus on Ukraine as a candidate country for EU membership. Prof. Petrov acknowledged that granting candidate status to Ukraine, despite the ongoing conflict with Russia, was a significant political and moral support to enhance Ukraine's resilience. However, he emphasized that Ukraine still needs to fulfill the Copenhagen criteria, which includes demonstrating evidence of democratic values and the rule of law (specifically regarding the independence of the judiciary, fighting corruption, and freedom of the media).

Prof. Petrov concluded by expressing the importance of following ongoing events and developments related to migration.



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Dr. Jean-Pierre Gauci, The British Institute of International and Comparative Law (BIICL)
Selective Rule of Law Adherence in the UK And EU: The Case of Migration Management

Dr. Jean-Pierre Gauci focused on the topic of migration and the rule of law, specifically addressing the issues related to forced migration and the handling of migration by both the United Kingdom (UK) and the European Union (EU). He expressed a less optimistic view and highlighted the sidestepping of the rule of law in the context of migration management.

Dr. Gauci pointed out that negative discourse around migration often originates from politicians, including home secretaries and ministers of Internal Affairs, which influences public perception and voting behavior. The use of crisis terminology to describe migration was also discussed, emphasizing the need to differentiate between different types of crises and the perspectives of different stakeholders.

Regarding the EU, he highlighted the shifting of Europe's border through privatization of immigration control, carrier sanctions, and border controls. The responsibility for migration management has also been shifted to countries like Turkey and Libya. However, Gauci raised concerns about the treatment of migrants in these countries and the lack of accountability for human rights violations.

In the context of Libya, the speaker criticized the EU's involvement in so-called search and rescue operations, which often involve interception at sea and returning migrants to Libya. This approach avoids accountability for human rights violations that would occur if the EU were to rescue and return migrants directly. Dr. Gauci emphasized the need for accountability and raised questions about the effectiveness of existing accountability mechanisms.

He also discussed the illegal immigration bill in the UK and its implications for international law and human rights. According to Dr. Gauci, the bill amounts to a refugee ban and restricts access to justice for affected individuals. He highlighted the negative impact on migrants' rights and access to justice, particularly in life-and-death situations.

His presentation concluded with a call to learn from positive measures taken in other contexts, such as the protection of Ukrainians in the Ukraine conflict, and to apply those lessons to protect non-Ukrainian migrants. Dr. Gauci expressed concern about the



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reduction of judicial engagement and the negative impact on rights and access to justice under the proposed measures.

Ola Ugwu, Bingham Centre for the Rule of Law, BIICL

Public and Youth Engagement: An Essential Mechanism for Advancing the Rule of Law in a Democratic Society.

Ola Ugwu shared her professional journey to a career in law and discussed the importance of focusing on what one can control to make a significant impact. Ugwu emphasized the significance of public engagement and public legal education in advancing the Rule of Law.

The speaker discussed the Bingham Centre's efforts in advancing the Rule of Law through a dynamic public and youth engagement programme. She highlighted initiatives such as Rule of Law school assemblies, workshops, and partnerships with digital organizations to develop educational materials and videos tailored to children and young adults. The speaker emphasized the importance of engaging disadvantaged groups and giving them a voice through publications as well as fostering an inclusive dialogue.

The speaker mentioned the establishment of a [Rule of Law Digital Hub](#), which provides a centralized platform for Rule of Law resources. She also highlighted the Bingham Centre's massive open online course ([MOOC](#)) on the Rule of Law, which has garnered a significant number of views and completions. The speaker emphasized the importance of learning outside the classroom and highlighted collaborations with sports organizations to engage young people in sports activities while teaching them about the Rule of Law.

The speaker discussed how the Bingham Centre's hands-on workshops and events provide invaluable opportunities for young people to apply Rule of Law principles to real-world issues and engage in honest and open conversations with parliamentarians and experts. She highlighted upcoming Rule of Law events focusing on artificial intelligence ethics, youth justice, and homelessness. Ugwu acknowledged the role of the diverse volunteer group, [BIICL Ambassadors](#), in the success of these initiatives. She emphasized the importance of representation and gaining the trust of the public through a diverse and inclusive political and legal landscape.



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In conclusion, the speaker emphasized the need to leverage public legal education and diversity to advance the Rule of Law dynamically. She expressed optimism that these efforts, if successful, will have a significant impact on democracy.

Q&A

- [How far does the common migration policy extend within the EU, and is there a need for more harmonization and solidarity?](#)

The speakers provided insights into the existing qualification and responsibility assignment systems within the EU, highlighting both the progress and challenges in achieving harmonization. They mentioned ongoing updates and the allocation of responsibilities based on country relationships and integration with Europe. They also acknowledged the need for funding and the importance of addressing solidarity issues.

- [What strategies can be employed for convincing those in power of the value of the rule of law, especially when ignoring it seems more convenient?](#)

The speakers shared their perspectives on the matter, emphasizing the power of dialogue, the correlation between rule of law compliance and economic stability, the importance of community voices and advocacy organizations, and the role of education in promoting the rule of law.

- [What is the potential impact of technology and artificial intelligence on decision-making processes and the implications for the rule of law?](#)

The participants expressed concerns about the potential devaluation of human judgment and the need to maintain exceptional legal arguments that go beyond the average responses generated by AI systems.



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Session 3 - The Rule of Law and Judicial Independence

Moderator: Prof. Sir David Edward

Honorary Fellow of University College, Oxford, Professor Emeritus at the School of Law, University of Edinburgh

Dr. Oliver Gerstenberg, UCL Faculty of Laws

'United in Diversity': The Role of The CJEU as an Exponent of the Rule of Law in the EU.

Dr Gerstenberg focused on the crucial role of the rule of law in the European Union (EU) and its relationship to member states' national identities. His presentation delved into the provisions of the EU treaty, particularly Article 2, which declares the EU as a community based on the rule of law and highlights the values common to member states. He emphasised that the rule of law serves as the binding force holding the EU together as a Peace Project, fostering mutual trust among member states. However, a key point of contention emerged when considering Article 4, which underlines the importance of respecting member states' equality before the treaties and their national identities, deeply embedded in their political and constitutional structures. The absence of a hierarchical order between these provisions raised questions about how they can be harmonised and integrated into a coherent framework for the Court of Justice of the EU.

The Court of Justice of the EU can be portrayed as a technocratic elite, accused of interfering with national identities and democracy through broad interpretations of EU competences. Dr Gerstenberg referenced the German Federal Constitutional Court's dismissal of the Court of Justice's decision on the bond-buying program as an example. Although the dispute was temporarily resolved, the tensions between the two articles have resurfaced in the present political climate, constantly testing the limits of constitutional tolerance within the EU. Governments and movements advocating for absolute popular sovereignty challenge not only interpretations of the rule of law but also the principle itself.

Dr Gerstenberg pointed to the recent judgments on the conditionality mechanism involving Hungary and Poland as vivid illustrations of these challenges. These governments argued that the rule of law is inherently political rather than legal, essentially questioning the foundation of the rule of law principle. The question emerged: Can the EU engage with countries like Poland and Hungary, considering the rule of law as just



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another partisan political ideology, or should it be regarded as a framework enabling dialogue across diverse divides?

In response to these challenges, Dr Gerstenberg argued that only national identity conceptions aligning with the framework values in Article 2 deserve respect under Article 4, which encompasses the equality of member states before the treaties. Article Four should not be perceived solely as a formal interest in equality and immunity, but as a principle of legitimacy providing normative justification for the supremacy of EU law over domestic law. It also serves as a litmus test for the boundaries of EU constitutional tolerance toward national identity claims, which reflect the historical experiences and democratic choices of diverse member states.

Dr Gerstenberg also discussed the notion of "thinness" and "thickness" regarding the rule of law as a shared framework. Should the rule of law be narrowly defined, focusing exclusively on judicial independence, or should Article Two be interpreted more inclusively, encompassing values related to social liberalism, such as gender, sexuality, multiculturalism, religious diversity, and refugees? The question of whether the EU and the Court of Justice have the authority to impose these values on member states that embrace traditional values as part of their national identities was raised. Additionally, the panel considered the EU's ability to mobilise its citizens to regain support for the rule of law and enhance civic democratic life within the EU.

Another area of discussion revolved around the tension between member states' voluntary submission to the rule of law as a means to protect democratic identities and the perception that the EU's legal order poses a threat to member states' fundamental political and constitutional structures, which EU membership is meant to protect and respect. Dr Gerstenberg explored how to reconcile these two conflicting aspects and referred to constitutionalising statements by the Court of Justice. These statements emphasise member states' commitment to the common values of liberty and democracy, establishing a structured network of principles, rules, and interdependent legal relations that bind the EU and its member states reciprocally.



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Prof. Adam Lazowski, Westminster Law School

Independence of the Judiciary as Condition Sine Qua Non of EU Membership.

This section centred on the crucial issue of rule of law in the European Union accession process, with a particular focus on the pre-accession policy and the challenges faced by candidate countries. The speakers analysed the significance of the rule of law, its implications for EU membership, and the measures taken by the EU to address potential backsliding in member states.

Prof. Lazowski began with a hypothetical courtroom scenario, where a person being prosecuted refused to answer a yes-or-no question posed by the judges, arguing that such an answer would order them to respond in a certain way. This highlighted the complexity and nuance often involved in legal matters, emphasising the difficulties in providing simple binary answers.

He addressed the EU's pre-accession policy and its evolving approach to the rule of law. He highlighted that the focus on the rule of law as a condition for accession only became prominent in the early 2000s, with the realisation that EU membership alone could not resolve all challenges faced by new member states. The EU recognized the need to ensure the proper functioning of institutions and the rule of law within candidate countries, particularly those emerging from various forms of dictatorship.

Prof. Lazowski discussed the failures of conditionality during previous enlargements, including the 2007 enlargement, which led to the European Commission's reflection on how to improve the pre-accession policy. The Cooperation and Verification Mechanism (CVM) was introduced as a tool to monitor progress in key areas, such as the rule of law, during negotiations with countries like Bulgaria and Romania. Furthermore, the negotiations with Turkey and Croatia compelled the EU to refine its approach, ensuring that reforms were implemented before accession.

Prof. Lazowski emphasised that the EU's attention to the rule of law matters for two main reasons. Firstly, the EU is a legal system built on mutual recognition, where the independent application of EU law by member states' judiciaries is vital. Secondly, it is crucial to prevent backsliding and maintain the rule of law within the EU. The cases of Hungary and Poland were highlighted as examples where internal reforms challenged the rule of law, prompting the Court of Justice to play a role in defending EU values.



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The presentation also delved into the structure of the EU accession process, including the use of benchmarks and conditionality. Prof. Lazowski explained that the EU has significantly strengthened its pre-accession policy, setting specific benchmarks and conditions related to the rule of law early in the accession process. Rule of law issues, including the independence of the judiciary and corruption, are now treated as separate chapters and receive substantial attention.

Regarding the accession negotiations, Prof. Lazowski noted that the EU has introduced mechanisms to monitor and address potential backsliding during the process. The EU has the power to suspend negotiations or freeze progress in specific areas if backsliding occurs or if progress in fundamental areas, such as the rule of law, lags behind. The EU is vigilant throughout the negotiations, ensuring that reforms are pursued and implemented.

He also highlighted the *Republika* Judgement by the Court of Justice, which confirmed that once a country becomes an EU member, it cannot engage in backsliding concerning the rule of law. This Judgement provides the European Commission with additional leverage to address any violations of EU values.

Additionally, the presentation addressed the tools available to the EU to address non-compliance by member states, including infringement procedures and penalties. However, Prof. Lazowski noted that there is room for improvement, suggesting that the current system of penalties for rule of law breaches may not be proportionate or adequately aligned with the severity of the violation.

He concluded by emphasising the importance of the rule of law in the EU accession process and the measures taken to ensure its implementation and preservation. The discussions underscored the EU's commitment to the rule of law and its evolving approach to addressing challenges in candidate and member states. The need for ongoing monitoring, benchmarks, and conditionality were emphasised to maintain the rule of law and protect EU values throughout the accession process and beyond.

Dr. Barbara Grabowska Moroz, CEU Democracy Institute

Judicial Independence in The Context of a Debate Between Luxembourg and Strasbourg

This presentation focused on exploring the evolving relationship between the European Court of Human Rights (ECtHR) in Strasbourg and the Court of Justice of the European



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Union (CJEU) in Luxembourg concerning the rule of law. Dr. Barbara Grabowska Moroz delivered a presentation that analysed the recent developments in this regard, with a specific emphasis on the case law and interactions between the two courts.

Dr Grabowska Moroz began by acknowledging the significant changes that have occurred since her last visit to London in January 2020, including the occurrence of Brexit and the global impact of the COVID-19 pandemic. She highlighted that while much has changed during this period, some aspects have remained unchanged, warranting a closer examination of the evolving relationship between the ECtHR and the CJEU.

The speaker highlighted that the courts had been relatively slow in addressing the rule of law crisis, particularly in cases concerning Poland. She noted that the first rule of law judgement was not delivered until 2020, six years after the crisis began. The Constitutional Tribunal case and the pending case before the CJEU regarding the violation of the convention by the Polish courts were also mentioned.

Dr Grabowska Moroz pointed out that there seemed to be a deliberate attempt to avoid references to the ECtHR in the CJEU's rulings. While the Advocate Generals' opinions occasionally referred to Strasbourg's case law, the CJEU did not explicitly mention it in many cases. This avoidance could potentially be seen as an effort to bypass the ECtHR's influence and establish distinct standards within the EU legal framework.

She further discussed the implications of such avoidance and highlighted a specific case decided by the CJEU in the previous year. In this case, an unlawfully appointed judge from the Polish Supreme Court initiated a reference to the CJEU to engage in a dialogue on judicial independence. The CJEU found the reference admissible, despite the judge's previous violation of the convention as determined by the ECtHR. Dr. Grabowska Moroz expressed concerns about this ruling's impact on the presumption of judicial independence and its potential negative consequences for the CJEU's credibility.

She argued that the CJEU's ruling undermined its own case law, particularly the *Banco Santander* ruling of 2025, which formed the basis for the concept of effective judicial protection. By excluding Article 19 and narrowing the focus to Articles 6 and 7, the CJEU appeared to disregard both Strasbourg's jurisprudence and its own previous decisions.

Dr Grabowska Moroz cautioned that the CJEU's approach could have broader implications, including legitimising unlawfully appointed judges and raising questions about democratic transition in the event of political changes. She emphasised the



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importance of Strasbourg's reaction to such cases and how the ECtHR might respond to the CJEU's diverging approach.

In conclusion, she highlighted the CJEU's tendency to avoid references to the ECtHR, potentially leading to a divergence in legal interpretations and a diminishing recognition of Strasbourg's jurisprudence. The implications of such developments on the rule of law and judicial independence within the EU remain significant, and further examination and consideration of these issues are crucial moving forward.

Dr. Oana Stefan, Centre of European Law, King's College London
Judicial Independence and the Rule of Law: A Romanian Case Study

Dr Oana Stefan provided insights into the unique characteristics of Romanian cases in relation to the rule of law. Dr Stefan shared her perspective on the challenges faced by Romania and discussed the contextual and legal factors that make Romanian cases distinct.

Dr Stefan began her presentation by expressing her gratitude for the invitation and the opportunity to share her work on the ongoing paper regarding Romanian cases. She acknowledged the common perception that Romanian cases are complex and not easily understood by outsiders. Dr Stefan argued that Romanian cases are simply different.

She highlighted two main reasons for the distinctiveness of Romanian cases. The first reason is the contextual factor, specifically the interplay between corruption and the independence of the judiciary. Dr Stefan appreciated that the Principles Project recognizes the significance of addressing corruption in the rule of law context. She emphasised that Romania's starting point includes high levels of corruption, which contribute to a lack of judicial independence. Dr Stefan mentioned the reforms initiated in 2004 under pressure from the European Union, aimed at enhancing the independence of the judiciary and combating corruption. However, she pointed out that the implementation of these reforms faced challenges, leading to the perpetuation of corruption within the system.

In 2017, a turning point occurred when certain reforms were reversed, allowing individuals to benefit from a more lenient penal system. Dr Stefan mentioned controversial reforms, including interim appointments of chief inspectors to the judicial inspectorate, the creation of sections with special powers, and changes in the liability of magistrates. These



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reforms, aimed at reverting to old practices, have faced legal challenges through preliminary references to the courts.

The second factor contributing to the uniqueness of Romanian cases, according to Dr Stefan, is the legal dimension. She discussed the Cooperation and Verification Mechanism (CVM) established for Romania and Bulgaria as part of their accession process to the EU. Dr. Stefan explained that the CVM requires annual reports on the progress made by Romania in addressing rule of law issues. While these reports and recommendations from the European Commission are not legally binding, they serve as a basis for dialogue and cooperation. However, she pointed out three shortcomings of the CVM: non-binding nature, limited effectiveness in addressing rule of law problems, and inability to manage the lack of diversity in fundamental values.

Dr Stefan further highlighted the proliferation of preliminary references to the Court of Justice of the European Union (CJEU) based on the CVM reports. These references have resulted in numerous cases focusing on the principles of progression, primacy of EU law, fight against corruption, clarification of the powers of the Romanian Constitutional Court, and the promotion of judges. She noted that these cases reveal the limitations of the CVM procedure, as they face challenges in terms of non-binding reports, lack of viable dialogue, and the need for more effective mechanisms to address rule of law concerns.

In conclusion, Dr Stefan argued that the soft law mechanisms, such as the CVM, are ineffective in dealing with the challenges faced by Romania in relation to the rule of law. She expressed concerns about the non-binding nature of the reports, the failure to engage in a meaningful dialogue, and the lack of adaptability to address fundamental values. Dr. Stefan suggested a reevaluation of these mechanisms and emphasised the importance of upholding the autonomy of EU law in addressing rule of law issues. She concluded by highlighting the ongoing debates surrounding the conditionality regulation and the recent cessation of the CVM, signalling the need for further exploration and effective solutions in addressing rule of law challenges in Romania.

Dr. Julinda Beqiraj, Bingham Centre for the Rule of Law, BIICL

Judicial Reform in Albania: The Path Towards Meeting Standards for EU Membership.

Dr Beqiraj's presentation focused on the challenges and effectiveness of the steps taken in Albania's comprehensive justice reform process. The reform was initiated in October 2014 with the aim of establishing an effective system of checks and balances, combating corruption, and aligning with European Union (EU) membership requirements. The justice



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reform process was driven by the objective of addressing the perception of Albania lacking an independent and accountable justice system.

Constitutional, legal, and institutional changes were central to the reform efforts. Approximately one-third of the Albanian constitution was modified, including provisions for the establishment of new independent institutions to govern the judiciary and prosecution system. Over 30 core laws were adopted, focusing on judicial independence, reducing government interference, and combating corruption and organized crime. Additionally, specific laws were revised, such as the Criminal Code, Criminal Procedural Code, and Administrative Court law.

Notable new institutions were established, including the High Judicial Council, which promotes and evaluates judges, and a similar body for the governance of the prosecution system. These bodies consist of magistrates, lawyers, academics, and civil society representatives, ensuring independence from the government and political influence. Another key feature is the vetting process, a transitional reevaluation process for all sitting judges and prosecutors. This process involves financial checks, examination of connections with organized crime, and professional evaluations.

While the reform efforts aim to align Albania's justice system with the rule of law, there have been side effects and challenges. The reduction in the number of judges (more than 50% of magistrates have left the system voluntarily or failed the vetting process) has increased the backlog of cases, leading to delays in the resolution of legal matters. Claims have been brought to the ECtHR regarding the compliance of the vetting bodies with requirements for an independent and impartial judiciary, and the court has ruled that these bodies meet the necessary standards.

In conclusion, Albania's justice reform process has addressed critical challenges and aimed to ensure an independent and accountable justice system. The reform has involved constitutional, legal, and institutional changes, along with a comprehensive vetting process. While the process faces challenges and burdensome consequences, the aim is to establish a system that complies with the rule of law and positions Albania for future EU membership negotiations. Ongoing monitoring and evaluations by international bodies contribute to the legitimacy and effectiveness of the reform efforts.



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Q&A

- Dr Grabowska Moroz, could you comment on whether the Court of Justice of the European Union would have had to apply or consider standards for judicial independence in a different way in the context of the preliminary ruling procedure? If the EU was a party to the European Convention on Human Rights, and whether the fact that the court didn't mention I didn't follow the jurisprudence of the Strasbourg Court in the recent case that you mentioned, whether that tell us anything about the prospect of the European Union exceeding in the near future.

Dr Grabowska Moroz expressed concerns about the Court of Justice's approach to applying rulings from the European Court of Human Rights. She highlighted the lack of open discussion on this issue, implying that the Court of Justice may not fully recognize or prioritize the importance of judicial independence. Her remarks shed light on potential challenges within the EU system and the need for further examination of the relationship between different judicial bodies.

- Could the panel reflect on the likelihood of seeing enlargements of the EU in the next 5-10 years considering the internal political situation?

Dr Lazowski emphasized the importance of considering the reforms within a broader context, particularly for countries like Albania and others in the region. He highlighted that the process of state creation and societal change is a significant challenge that takes time to overcome. These countries are not only undertaking reforms driven by the goal of EU accession but are also navigating the complex task of transitioning away from their Soviet past and addressing deep-rooted societal differences. He stressed the need to recognize the unique circumstances and challenges faced by these countries.

Additionally, Dr Lazowski cautioned against the potential risks of pushing too hard with conditionality. He referred to the vetting process in Albania as a cautionary example, where excessive pressure could result in empty courts and difficulties in reestablishing a functioning judicial system. He called for a delicate balance between conditionality and allowing for the necessary societal changes to take place.

Dr Gerstenberg focused on the geopolitical significance of the EU's stance and questioned whether it is possible to distinguish judicial independence in light of certain challenges. His remarks suggested that the EU needs to carefully consider its position and



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approach to ensure that it upholds the values of judicial independence in an ever-evolving geopolitical landscape.

Dr Beqiraj addressed questions related to the level of preparation of countries seeking accession. She emphasized the ongoing dialogue between Albania and the European Commission, acknowledging that while progress has been made in the area of the rule of law, there are other areas where the system is lagging behind in adopting and implementing the existing *acquis*.

- *Oana, you mentioned that four judicial associations in Romania initiated proceedings before the court of justice, this was not the case of Poland. Whether associations are important rule of law actors in Romania in dealing with this domestic mess?*

Dr Stefan discussed the pressures faced by judges and the varied reactions observed within the lower courts. She provided examples where judges adjusted their approaches to conform with the decisions of the Romanian Constitutional Court, which raised concerns about the potential impact on judicial independence. Additionally, she highlighted the risks of rule of law backsliding and the infiltration of corrupt processes in institutions across member states. These insights underscored the complexities involved in maintaining and safeguarding judicial independence within the EU.

- *Julinda, what happens to the vacant posts resulting from the vetting process in Albania?*

Regarding the replacement of vacant positions, Dr Beqiraj explained that judges from the higher court were the first to be vetted, and the remaining judges were concentrated in fewer courts as part of the judicial map revision. She also mentioned the challenge of balancing the need for the vetting process to continue as planned and be concluded, with the necessity to ensure an effective overall functioning of the judicial system.

In terms of assessing/measuring the success of the reform, Dr Beqiraj referred to a recent World Bank study that highlighted a discrepancy between perception and experience results. While there was a shared general perception of a low success of the judicial reform, those who had actual experience with the justice system had a more positive outlook, suggesting the presence of prejudice within the system.