



2025 R-EU-R Jean Monnet Module Intensive Course
Rule of Law and Fundamental Rights Protection in the EU

RULE OF LAW AND THE ROLE OF
NATIONAL COURTS

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της Ευρωπαϊκής Ένωσης

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ARTICLE 19(1) TEU

From cornerstone of judicial system to cornerstone of rule of law

Old Article 220 TEC (ex Article 164 TEC): The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

New addition: Effective judicial protection

PORTUGUESE JUDGES

Mutual trust between MS requires observing common values of Art 2TEU

Concrete expression

Not only to CJEU, **but also national courts**

VAN GEND BY ANALOGY: *THE VIGILANCE OF INDIVIDUALS – national courts - CONCERNED TO PROTECT THEIR RIGHTS AMOUNTS TO AN EFFECTIVE SUPERVISION IN ADDITION TO THE SUPERVISION ENTRUSTED BY ARTICLES 169 AND 170 TO THE DILIGENCE OF THE COMMISSION AND OF THE MEMBER STATES.*

HOW can we have effective judicial protection?

By having independent courts

The concept and indispensable features of a national court under EU law according to the case law of the CJEU

Decisive factors:

whether the body is established by law,
whether it is permanent,
whether its jurisdiction is compulsory,
whether its procedure is inter partes, whether it applies rules of law,
whether it is **independent**.

WHY WE NEED INDEPENDENT COURTS?

(74) *Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as **to dispel any reasonable doubt in the minds of individuals** as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it*

MEMBER STATES

1

POLAND

Rule of Law and
Judiciary

2

ROMANIA

In between defiance
and compliance

3

HUNGARY

Rule of Law and
Corruption, Populism
Conditionality

POLAND CHRONOLOGY

2015

Polish Elections and Constitutional Court crisis

2016-7

Launch of Rule of Law Framework Procedure vs Poland

2018

- **Portuguese Judges** Judgement (27/2)
- **Launch of Infringement procedure C-192/18 (15/3)**
- 1st preliminary ruling request C-585/18 (20/9)

2019

- **C-619/18 Decision (supreme court judges retirement age) 24/6/2019**
- C-192/18 Decision (ordinary judges retirement age) 5/11/2019
- C-585/18 Decision (New Supreme Court Disciplinary Chamber for retirement) 19/11/2019
- Seim allows Disciplinary Chamber to remove judges, if they take political activity (12/2019)

2020

- C-563/18 Lowitz (Disciplinary regime)
- C-791/19 Order (to immediately suspend Disciplinary Chamber) 8/4/2020
- U2/20 Decision of Pol.Const.Tribunal on appointment of judges

POLAND CHRONOLOGY

2021

- C-824/18 Preliminary Ruling on appointment of Supreme Court judge (2/3/2021)
- Application of Polish government to PCT on primacy of EU law (29/3/2021)
- C-204/21 Interim measures referral by Commission (31/3/2021)
- C-204/21 Order vs Poland (14/7/2021)
- P 7/20 PCT Decision: CJEU order contrary to Polish Constitution (14/7/2021)**
- C-791/19 Decision (disciplinary system) (15/7/2021)
- C-204/21R-RAP Reaffirms Order vs Poland (6/10/2021)
- K 3/21 PCT Decision: CJEU order contrary to Polish Constitution (7/10/2021)**
- C-204/21R Interim Relief vs Poland (27/10/2021) - **1m euros daily penalty**

2022

- First inadmissible cases (C-508/19, C-132/20 Getin Noble)
- T-830/22 action of Poland vs the fine of the interim measure C-204/21R (22/12/2022) – Hearing 7/2024

2023-4

- T-156/23 action of Poland vs offsetting of the amounts receivable by way of the daily penalty payments (23/3/2023)
- C-204R-RAP Reduction of fine to 500.000 (supreme court cases, partial disciplinary) (21/4/2023)
- C-204/21 actual decision (disciplinary chamber) (5/6/2023)
- C-448/23 Commission vs Poland for P7/20 and K3/21 cases (17/7/2023)**
- Elections (4/2024)

2. ROMANIA

18 May 2021: C-83/19 et al: Asociația 'Forumul Judecătorilor din România': 1) interim appointments are to be precluded when there are doubts as to the exertion of pressure to judges, 2) **special section Public Prosecutor's Office for investigating offences by judges must be justified and guaranteed that will not undermine independence of judiciary**, 3) courts should be permitted to disapply national provisions contrary to EU law

21 December 2021: C-357/19 et al: Euro Box Promotion and Others: **principle of primacy obliges national courts to follow CJEU judgements and not national rules that binds them to follow higher court decisions**

22 February 2022: C-430/21 : RS: **RCC power to limit national courts implementation of preliminary rulings must be precluded** and also the imposition of disciplinary liability for not following the constitutional court decision, when that is contrary to EU law

ROMANIA – confusion at national level

Courts that followed the CJUE criteria and disregarded the Romanian Constitutional Court Decision no.390/2021

Courts that followed the Romanian Constitutional Court Decision no. 390/2021 (HCCJ, Judgement of 8 September 2021)

Courts that resumed the dialogue with the CJUE (C-430/21)

Courts that refused to seize again the CJEU and invoked the *Cilfit* caselaw of *acte éclairé*

**PRIME EXAMPLE OF ROLE OF
NATIONAL COURTS**

3. HUNGARY?

- Hardly any preliminary questions from their national courts
- Freezing of funds coupled with reluctance of government to address problems
- **13 March 2023:** Action brought by Hungarian Universities vs Council Implementing Decision (EU) 2022/2506 (T-115/23 etc)

CONCLUSION

- Article 2 TEU and 19 TEU give EU competence and direct effect to “effective judicial protection”
- What is this competence? That courts should be independent
- Do we have definition? YES! (internal, external – established by law etc)
- Why need such competence? In order to protect citizens and national judge vs dire breaches of rule of law
- Do we have examples of such breaches? YES!
- Poland! – Romania! – but Hungary?
- Difference between MS shows difference between desire of national courts to promote EU rule of law and its values