



Short Course: European Rule of Law Toolbox

Course Timetable

4 sessions: 11–12 and 18–19 May 2022
10:00 - 12:00 and 13.00 - 15.00 (UK time)

TIME	TOPIC
<p>11 May 2022 10:00 - 12:00 And 13:00 - 15:00 (UK time) Lecturer: Prof. Dimitry Kochenov, CEU Democracy Institute</p>	<p>Session 1: Introduction to the Rule of Law in the EU and the Council of Europe & Principles</p> <p>The first session of this training course will provide a participant-centred introduction to the Rule of Law in Europe. Before the session, the participants will be encouraged to make a short written submission outlining their conception of the European Rule of Law, and also highlighting an issue from their local context. The lecture will introduce how the concept has been defined by both the European Union and the Council of Europe. This will inform participants of the key characteristics of the Rule of Law found in authoritative statements, and provide a background of the seminal historical developments.</p> <p>The lecture and the workshop will also encourage critical reflection on whether the nature of the EU and the Council of Europe as organisations has shaped their respective understandings of the Rule of Law. Namely, is the Council of Europe conception too focused upon judicial proceedings due to the focus on the fundamental right to a fair trial? And is the EU conception too focused on securing the autonomy of EU law and its effective reception in the Member State legal orders?</p> <p>The workshop will encourage participants to discuss the concerns and issues they have encountered in their professional lives within their local contexts, and apply the key EU and Council of Europe documents to determine whether these do fulfil the requirements of being Rule of Law problems.</p>
<p>12 May 2022 10:00 - 12:00 And 13:00 - 15:00 (UK time) Lecturer: Laurent Pech, Middlesex University</p>	<p>Session 2: Political mechanisms</p> <p>In the 21st century, the Rule of Law in the EU has moved from a concept tied purely to the enforcement of EU law to being a foundational value and prerequisite for membership. The Copenhagen Criteria for former Communist states made Rule of Law conditionality a condition of accession. Rule of Law was first included as a value of the European Union in the primary law of the Treaties in Article 2 TEU. However, the EU has faced the challenge of ensuring that Member States continue their compliance with Rule of Law characteristics after accession.</p>

	<p>Article 7 TEU was drafted to provide a political means for addressing such deficiencies. After being used a means to exert diplomatic pressure on Austria in the Haider Affair, concerning the inclusion of a far-right party in Austria's governing coalition, the clause has been contentious before and after it was finally applied to Poland and Hungary. To mitigate procedural constraints, the EU has adopted various pre-Article 7 and related political mechanisms, such as the mechanism on Rule of Law, democracy, and fundamental rights, the Commission annual Rule of Law reports, and the European Council's Rule of Law dialogue. In terms of external relations, the sessions will also consider how the EU upholds the Rule of Law as a cornerstone for new relations with the former Member State of the United Kingdom.</p> <p>In the Council of Europe, the judicial focus on right to a fair trial under Article 6 ECHR can be contrasted to the monitoring which takes place in the political forum of the Parliamentary Assembly of the Council of Europe.</p> <p>The lecture will present these political mechanisms and analyse their effectiveness. The workshop will encourage the participants to consider avenues by which it may be possible to use democratic channels in order to influence the response to Rule of Law issues through the political means identified. This includes civil society contributions to Rule of Law reports; how to contact Members of the European Parliament with regard to resolutions concerning the Rule of Law, and means to influence relevant actors at the national level.</p>
<p>18 May 2022 10:00 - 12:00 And 13:00 - 15:00 (UK time) Lecturer: Prof. Dr. Antonia Baraggia, University of Milan</p>	<p>Session 3: Administrative mechanisms</p> <p>The Rule of Law is a founding value of both the European Union and the Council of Europe. Therefore, it is expected that it inspires not only treaty provisions, but also every policy designed in secondary legislation.</p> <p>In late 2020, the EU legislature adopted a regulation which connects the requirement to respect the Rule of Law and the Union's sound financial management. This generated a great deal of debate on the proper legal basis, and resulted in Poland's and Hungary's actions before the Court of Justice. Since 2007, Bulgaria and Romania are subject to the Cooperation and Verification Mechanism intended to safeguard the internal market by adopting specific benchmarks concerning, in particular, judicial reforms and the fight against corruption.</p> <p>As far as the Council of Europe is concerned, the measures in question include reports and studies of the European Commission for Democracy through Law (Venice Commission), a body providing expertise and advice in constitutional matters. The most important output of the Venice Commission for this topic is the Rule of Law Checklist adopted in 2016. Furthermore, the Council of Europe also mandates a set of monitoring procedures supervised by the Group of States against Corruption (GRECO) which aims to improve the capacity of its members to fight corruption.</p> <p>The lecture will discuss the main administrative measures provided in secondary instruments at both the EU and the Council of Europe level, including in particular the recent EU Rule of Law conditionality regulation. During the</p>

	<p>workshop, the participants will be able to consider the interaction between those mechanisms and the tools of a purely political or judicial nature – e.g. whether they overlap or complement each other – and to discuss the extent to which it is permissible to adopt such measures on the basis of the pre-existing treaty provisions. Consequently, the participant will be able to consider, apply, and critique the use of administrative mechanisms in response to identified Rule of Law issues in Europe.</p>
<p>19 May 2022 10:00 - 12:00 And 13:00 - 15:00 (UK time) Lecturer: Dr. Barbara Grabowska-Moroz, CEU Democracy Institute</p>	<p>Session 4: Judicial mechanisms</p> <p>Courts are the main fora where dispute resolution takes place. At the international level, both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) are tasked with enforcing their respective legal orders. Since the value of the Rule of Law is explicitly provided for in both founding treaties (see Article 2 TEU and the preamble to the ECHR), its status cannot be reduced to a mere declaration that lacks binding force. It is therefore expected that these courts apply and uphold the principles of the Rule of Law in their day-to-day activities.</p> <p>At the EU level, the CJEU has explicitly applied the principle since its landmark judgment in <i>Les Verts</i> of 1986. Since then, the Luxembourg court has developed a set of requirements that further refines the concept of the Rule of Law, in particular as regards the EU's external policy and effective judicial protection within the Member States since its seminal ruling in the <i>Portuguese judges</i> case of 2018.</p> <p>This trend is also visible in the case-law of the ECtHR in which the Rule of Law, apart from its obvious interaction with human rights, is more increasingly connected to democracy so as to build a coherent system of requirements for the States Parties to the Convention that safeguard all three values simultaneously. However, there is still a set of matters which both courts have not yet fully considered, such as domestic legislative procedure and its compliance with the Rule of Law, or the subjective right of national judges to remain independent from undue pressure.</p> <p>The lecture will discuss the types of proceedings seeking to promote and enforce the Rule of Law that can come before the CJEU and the ECtHR, including infringement actions and requests for preliminary rulings in the EU, and direct and inter-state applications before the Strasbourg court. This approach will be supplemented by examples from existing case-law. During the workshop, the participants will consider the role that individual actors as well as civil society organisations can play in ongoing judicial proceedings or building up strategic Rule of Law litigation from scratch.</p>

* Speakers and timings are subject to change