



# Recent developments in EU law

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## TRANSCRIPT

Hello, and welcome to this short video on recent developments in EU Law. My name is Andrea Biondi. I'm Professor of European Law at King's College London. Now what we're going to discuss today is the big issues in contemporary European Union Law, and that is to say, whether how to reconcile member state sovereignty with the respect of certain basic fundamental principles of European Law. Now, I'm sure that you all follow on the media the long and now quite complicated controversies between certain member states, most notably Poland and Hungary, and the European Union.

The Polish and Hungarian governments are now putting in place several policies, which for many commentators and for also for the European institutions are at odds with the values upon which European Union is founded. We have the issues concerning migration, concerning protection of minorities, protection of rights for non-discrimination of sexual orientation, and so on and so forth.

The point we've been discussing today is judicial independence. There's been several cases brought by the European Commission against Poland, and in particular, against the new Polish law on the reform in the judiciary. Just to remind you, the Polish parliament passed legislation, which simply change the retirement age of judges, in other words, to shorten, the career of most of the judges and replacing them with new judges. This reform most has to do with the specific chamber, which was responsible for disciplinary action. In particular, there was some issues concerning the fact that those judges, which intended to refer a question to the ECJs, were automatically referred to disciplinary chambers.

The European Court of Justice in four or five judgments, one of the other held that these kinds of reforms, they actually violate European law. Why? Because they are a violation of the rule of law, which is one of the value specifically listed in Article 2 of the treaty, and also violation of Article 19 of the treaty, which says that all national courts needs to be provided with efficient remedies, and according to the European Court of Justice, these reforms, the private Polish national courts don't have that opportunity to be independent, to provide an efficient remedy, and so on and so forth.

To cut a long story short, the new reforms introduced by Poland were considered as against European law. In reality, the issues, then it's a question of supremacy. The Court of Justice makes the point that you joined the European Union, you knew that Article 2 listed certain kinds of values, the respect for fundamental rights, rule of law, market economic structure, and so on, so forth. Now, in those areas, Member States are no longer free to do whatever they like. In this case, you violated those values, and therefore this kind of legislation should be repealed.

The Polish government attitude was, "Forget about it. We're not going to comply with the judgment of the European Court of Justice," which is one problem. Then there are issues concerning these points that the Court of Justice then issues another judgment where they condemned Poland to pay some financial penalties, and so on, so forth. That's one problem.

There's also an internal question, because what the government did was to request an opinion from the Polish Constitutional Court on the assessing the issues of the possible clash between

the reforms on the Judiciary with EU law. You see that it's an important point. It is a specific request to the government, to the Constitutional Court to simply say, "How do you see this issue?"

Now, the Polish Constitutional Court in a very recent judgment, in last October, it's a pretty extraordinary judgment. The Polish Court, in a nutshell, said, "The Polish Constitution is superior to EU law." In particular, the Polish Constitutional Court found that Article 1, 2, and 19 of the Treaty of European Union, that is to say most of those articles, which have been the core legal basis for the judgments of European Court of Justice are incompatible with the Polish Constitution because the usual argument, "We never agreed to transfer those powers to the European Union, that is the Polish constitution is always supreme and so on so forth."

Obviously, a few comments. You're going to study other reactions from other national constitutional courts in Italy and the German, and so on so forth, which pick up some, in inverted commas, which fights with the European Court of Justice on specific points, but here, we're talking about something very different. We have a judgment that basically that undermines the most important principle upon which the European Union is founded, primacy, supremacy.

What the Polish Constitutional Court here says that as a general principle, the Polish Constitution is always superior to EU law. This is a systematic rebellion. Then again, the point that this is a little bit judgment, which was prompted by the government.

What is going to happen now? Of course, the Polish Constitutional Court is in clear contrast with EU Law, that has to be said. What can be done? Should the commission then now bring an action against Poland for again, the behavior of the Polish Constitutional Court? Possibly. Should there be some other kinds of sanctions? For instance, you can actually argue that Article 7 of the Treaty could be triggered. Article 7 provides that if a member state persistently violates fundamental rights and fundamental values of the European Union, the council can actually suspend that state from voting in the European Union institutions. So that's strong sanctions.

There are also talks about the Recovery Fund. As you probably follow, because of the pandemic, the European Union decided to spend some EU money to help the member states recovering from the effects of the pandemic. Now, the disbursement of this amount of money is actually conditioned on certain kinds of criterias, some are economics, but some others are respect for the rule of law and fundamental values. Obviously, one option is now to block the Recovery Fund's money and those money which were supposed to go to Poland. Effective, good, bad? It's difficult because of course usually, economic sanction do not exactly work, at least in international law. Is that really the way forward? Difficult to say. Not for me to give an answer, but certainly, it's an issue that you need to keep on following and monitoring because it goes really at the heart of European Union integration, how to reconcile member states' diversity with the effective application of EU law.

The final point is, obviously, if a member state keeps on violating some of the fundamental values of the European Union, what would be the solution? Not an easy one, I know that.

You take care.