



CCPL

CENTRE FOR COMPARATIVE AND PUBLIC LAW  
AT THE FACULTY OF LAW, THE UNIVERSITY OF HONG KONG

HKU CCPL Talk

# Rule of Law Backsliding and the Response by European Courts (ECtHR and CJEU)

7 February 2024 (Wednesday) 1:00 - 2:00 PM

Room 723, 7/F Cheng Yu Tung Tower, HKU (in-person only)

In recent years across Europe, it has become almost a common place to speak of 'rule of law backsliding'. Such descriptor has been used in various jurisdictions – including Hungary, Poland, the United Kingdom, Turkey, Spain or Italy – to cover phenomena such as the packing of courts, the muzzling of the media, the shrinking of parliament, the restriction of human rights or the manipulation of the electoral system, among other things. While these phenomena find their expression in the constitutional order, they have more recently been addressed by regional courts, in particular the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). The response of European courts is often much awaited as the ultimate guardians of the rule of law and democracy. But have these courts provided an apt response considering the intricacies of their supranational position?

This presentation first offers an overview of these phenomena in three domestic jurisdictions (Hungary, Poland, and the United Kingdom) and examines if the notion of 'rule of law backsliding' is valid and sufficient to qualify them – or whether concepts such as populism and/or authoritarianism are also warranted. In Hungary, the presentation looks at the breadth of media concentration; in Poland, it examines the process of judiciary capture; in the United Kingdom, the presentation surveys the trajectory of the Rwanda Bill.

The presentation then critically assesses the response by European courts through select judgments. In the Hungarian context, it surveys recent cases of journalists having had their freedom of expression restricted (ECtHR); in the Polish context, the presentation summarizes the saga regarding conditional funding (CJEU) and appraises a possible human right to judicial independence (ECtHR); in the British context, the presentation examines the blocking of immigration legislation by 'interim measures' (ECtHR) and, more broadly, the strained relationship between the British government and the Strasbourg court since *Hirst v. The UK*.

SPEAKER



**Dr Alain Zysset**

School of Law, University of Glasgow (UK)

Alain Zysset is a Senior Lecturer in Public Law at the School of Law, University of Glasgow (UK). Alain's research looks at the practice of regional and international courts from the perspective of legal and political theory. He is the author of the *The ECHR and Human Rights Theory* (Routledge, 2017) and is currently completing a new monograph entitled *Calibrating the Response to Populism at the European Court of Human Rights* (Cambridge University Press, forthcoming 2024). Alain also has published in *International Journal of Constitutional Law*, *Human Rights Law Review*, *Global Constitutionalism*, *Ratio Juris*, *Criminal Law and Philosophy*, *Canadian Journal of Law and Jurisprudence*, *Transnational Legal Theory*, and *Critical Review of International Social and Political Philosophy*.

CHAIR



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