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.