



CALL FOR PAPERS

21-22 September 2023, Nijmegen, The Netherlands

From Rule of Law Backsliding to a Sustainable Rule of Law



This two-day conference is organized on the occasion of the appointment of **Petra Bárd** as [Professor of Sustainable Rule of Law](#) (inaugural speech to be held on Thursday 21 September 2023, at 15:45).

The conference consists of plenary key notes and panel debates with prominent academics as well as parallel sessions with invited speakers/discussants as well as paper presenters.

The rule of law has been under pressure in recent years. Several EU Member States have taken measures that undermine the independence of the judiciary or the protection of fundamental rights more generally. The independence of both the Polish Constitutional Tribunal and the Hungarian Constitutional Court has been severely compromised right at the start of rule of law backsliding and departure from the concept of constitutional democracy. Poland has, among others also established a disciplinary chamber within its Supreme Court to discipline judges engaging in 'political activity', thereby *de facto* intimidating independent judges who have spoken out against rule of law infringements. Both the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR) determined that this is not a lawful tribunal because of political interference. The independence of judicial authorities in Hungary has also been under attack, among others by subjecting judges to disciplinary procedures, or even dismissing them whenever applying EU law; via judicial 'reforms' weakening if not eliminating judicial self-governance; and by introducing dismissal and appointment processes for new judges and courts presidents, in

violation of the rule of law and sometimes even the national law in force. Such rule of law backsliding has gone hand in hand with relentless political and media attacks against the judiciary. Without the independence of domestic courts, democracy is also jeopardized and human rights violations are left without consequences. Judicial independence has an additional special role in the EU legal system: it is domestic courts together with the CJEU, which ensure that the EU and national authorities respect the 'rule of the game' in a community based on the rule of law. Without courts that are independent, EU law is not properly applied or disrespected altogether. These developments show that the rule of law requires constant maintenance and attention. This equally holds true for 'old' EU Member States like the Netherlands, usually championed as a forerunner in terms of rule of law and fundamental rights.

The effects of rule of law backsliding are severe for the EU and can even be seen as a threat to its existence. It therefore seems opportune to consider how it could maintain its basic integrity and coherence, giving thought to how possible 'blackmailing tactics' adopted by backsliding states might be circumvented. At the same time, it should be noted that rule of law backsliding is not an issue exclusive to the EU and its member states. The concept is in fact only one term used in an emerging research field related to a globally observed degradation in democratic rule. Facing similar problems in their own state, legal and political scholars from around the world are searching for instruments of resilience to uphold liberal democracy. The search for solutions therefore – although rightfully in the focus – should not be limited to the EU toolbox. It can be helpful to consider rule of law resilience as a broader issue of constitutional self-defence.

The central question of the conference is how to respond to rule of law backsliding (in the EU) and how to make the rule of law resilient or sustainable?

- What exactly are the 'principles of the rule of law', common to the Member States?
- What is rule of law backsliding and, hence, militant constitutionalism, constitutional self-defence and a resilient or sustainable rule of law?
- How can it be ensured that the values of the rule of law and the foundational principles of public law are preserved?
- What role do EU standards and/or EU institutions play in the sustainable protection of these values?
- What options are on the table for the EU to maintain its integrity and coherence in the current situation, circumventing possible 'blackmailing tactics' adopted by backsliding states?

Authors are invited to submit a paper that examines (one of) the questions. We especially welcome legal doctrinal as well as inter/multidisciplinary papers dealing with:

- the concept of rule of law backsliding;
- national (comparative) case studies examining domestic decline in values;
- (legal theories in relation to) militant constitutionalism and constitutional self-defence;
- legal procedures and avenues to enforce EU values, and viable strategies for going forward;
- the role of EU political institutions;
- the role of European and national courts;
- the role of other actors, including NGOs, journalists, academics and artists;
- mutual trust as a precondition for EU law from budget considerations to individual rights;
- EU criminal cooperation and mutual recognition;
- the interplay between the EC(t)HR and the (CJ)EU.

An extended abstract (400-600 words) and a CV should be submitted for review before 15 May 2023 to jasper.krommendijk@ru.nl. The selection process will be based on the quality of the abstract, as well as its capacity to engage with other proposals. Decisions on accepted papers will be made by 1 June 2023. Although no commitment towards publication can be provided, the conference speakers will be invited to contribute to a special journal issue or edited volume with a renowned publisher (details to follow).

This conference is organized within the context of the [Jean Monnet Chair on Rule of law in the EU and national legal orders \(EUroLNAT\)](#) of Jasper Krommendijk. The [Research Centre for State and Law \(SteR\)](#) is part of the Faculty of Law at Radboud University. The Centre conducts cutting-edge research in the field of public law, in particular the relation between law and the state. This conference is part of the research programmes 'Founding principles and fundamental rights' (with 'Resilient rule of law' as the research theme for 2021-2027), and 'Interaction between national and international law'.

Organising committee: Prof. Petra Bárd (Sustainable Rule of Law), Dr. Jasper Krommendijk (International and European law), Prof. Ronald Tinnevelt (Philosophy of Law), Prof. Henri de Waele (International and European law), Dr. Sjarai Lestrade (Criminal Law), Dr. Toni van Gennip (Constitutional law) and Chiel Kuypers LL.M. (Philosophy of Law).