**Enforcement of EU Values**

Professor Dimitry Kochenov (LEGS ‘02)

Fall term AY 2021-2022

Master’s level course

Mandatory/Mandatory-Elective/ Elective course for CCL LL.M, HR LL.M, HR MA, IBL LL.M

1 US credit / 2 ECTS credits

**Pre-requisites:** Master’s enrollment

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**BRIEF INTRODUCTION:**

The European Union is based on the values of democracy, rule of law, and human rights protection (inter alia). Although compliance with the founding values is presumed in its law, the Union is now confronted with persistent disregard of these values in two Member States. If it ceases to be a union of Rule-of-Law-abiding democracies, the EU is unthinkable. Purely political mechanisms to safeguard the Rule of Law, like those in Article 7 TEU, do not work. Worse still, their existence has disguised the fact that the violations of the values of Article 2 TEU are also violations of EU law. The legal mechanisms tried thus far, however, do not work either. The fundamental jurisprudence on judicial independence and irremovability under Article 19(1) TEU is a good start, but it has been unable to change the situation on the ground. Despite ten years of EU attempts at reining in Rule of Law violations and even as backsliding Member States have lost cases at the Court of Justice, illiberal regimes inside the EU have become more consolidated. More creative work is needed to find ways to enforce the values of Article 2 TEU more effectively. Taking this insight, we propose to turn the EU into a militant democracy, able to defend its basic principles, by using the traditional tools for the enforcement of EU law in a novel manner. This brief course will focus on the history of values-articulation in the EU, as well as their enforcement, approaching the subject matter in a critical vein. Buckle up of a couple of interesting discoveries about the Union and the nature of its law.

**GOALS:** The course’s core objective is to provide a meticulous state of the art engagement with the values of the Union expressed in Article 2 TEU with a particular emphasis on democracy and the rule of law.

**LEARNING OUTCOMES:**

- Knowledge of the basics of EU values and ability of their critical evaluation;

- Critical regard of the key theories underlying the concept of the Union founded on Art 2 values and its functioning;

- Evaluation of key rules and theories of EU values in terms of internal coherence and practical outcomes;

- Skills to work with primary and secondary EU law sources;

- All the natural benefits of working intensively in a small diverse intellectually engaged group: critical thinking; multicultural interpersonal skills; communication skills.

**COURSE REQUIREMENTS AND FINAL ASSESSMENT:**Class attendance is required and is indispensable for following the story of EU values in a fruitful way. Students are expected to have closely read all the materials assigned for each class and are encouraged to read broader than the obligatory assigned materials (usually in the range of 25.000 words). Having this background knowledge is crucial: students are expected to be in the position to engage critically with the readings. Every student is expected to participate fully and actively in class discussions. Participation in and preparation for our in-class discussions is a critical part of the course and will be taken into account in assessing the final grade: Prof. Kochenov will collect 300–500-words summaries of each of the obligatory readings assigned before each class. The summaries are submitted in hard copy and only signed by a student number to ensure anonymity. The summaries are graded pass/fail. Students who receive a fail or fail to submit the summaries of the required readings one time in the course of the semester are entitled to resubmit. Failure to submit suitable summaries the second time will result in a lower grade. Second resubmission will not be possible.

Final assessment: students will be expected to write a 5.000–7.000-words essay over the course of the semester. In each essay, the students are expected to critically engage with the themes of the seminar in light of the assigned readings and class discussions. The topic is selected in consultation with Prof. Kochenov, who will also be available to offer comments on the initial structure and on the draft close to completion. The grade for the essay is the final grade for this course, unless of course you failed the summaries of the obligatory readings for the second time during the semester, in which case the grade is lowered.

**WEEKLY PLAN OF THE COURSE AND COMPULSORY READINGS / OTHER MATERIALS**

1. **Introduction and welcome: back to the founding**(17 November, 1.30pm)

***We explore colonialism and nuclear armament as the founding objectives of integration***

The Schuman Declaration (1950): <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-204-en.pdf>

Andrew Williams, *The Ethos of Europe*, Cambridge: Cambridge University Press, 2010, chapter 1: ‘Peace’: pp. 22–69 <https://www.cambridge.org/core/books/ethos-of-europe/peace/5C38ADE38591D060001A25E293DB9240>

*Please also pick one of the following two readings. This one:*

Peo Hansen and Stefan Jonsson, *Eurafrica: The Untold History of European Integration and Colonialism*, London: Bloomsbury Academic 2014, chapter 1 ‘Introduction: The Past Europe Forgot’, pp. 1–16: <https://www.bloomsburycollections.com/book/eurafrica-the-untold-history-of-european-integration-and-colonialism/ch1-introduction-the-past-that-europe-forgot?from=search>

*or this one:*

Grégoire Mallard, ‘Crafting the Nuclear Regime Complex (1950–1975): Dynamics of Harmonization of Opaque Treaty Rules’, 25 *EJIL* 2014, 445:

<https://academic.oup.com/ejil/article/25/2/445/406216>

*Additional readings: to know more*

Gregoire Mallard, *Fallout: Nuclear Diplomacy in the Age of Global Fracture*, Chicago IL, University of Chicago Press, 2014.

Antoine Vauchez, ‘The Transnational Politics of Judicialization. *Van Gend en Loos* and the Making of EU Polity’, 16 *European Law Journal* 2010, 1.

Amedeo Arena, ‘How European Law Became Supreme: The Making of *Costa* v. *ENEL*’, Jean Monnet Working Paper no. 5/18, 2019: <https://jeanmonnetprogram.org/wp-content/uploads/JMWP-05-Amedeo-Arena.pdf>

**PLEASE COME PREPARED AND DO NOT FORGET THE SUMMARIES OF OBLIGATORY READINSG: THE REQUIREMENTS OF ATTENDANCE ARE THE SAME FOR EVERY SESSION**

1. **History and Nature of Values in EU Law** (23 November, 1.30pm)

***We scrutinize the growth of values in over the history of EU***

* Dimitry Kochenov, ‘EU Enlargement Law: History and Recent Developments: Treaty-Custom Concubinage?’, 9(6) *European Integration online Papers*, 2005, pp. 1–23:

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=704381>

*Please also pick two of the following three works:*

* Philip Allott, ‘The European Community Is Not the True European Community’, 100 *Yale Law Journal*, pp. 2485–2500: <https://digitalcommons.law.yale.edu/ylj/vol100/iss8/6/>
* J.H.H. Weiler, ‘Community System: The Dual Character of Supranationalism’, 1 *Yearbook of European Law*, 1981, 267–306: <https://academic.oup.com/yel/article-abstract/1/1/267/1657313>
* Laurent Pech and Kim Lane Scheppele, ‘Illiberalism within: Rule of Law Backsliding in the EU’, *CYELS*, 2017, pp. 3–47: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009280>

*To know more:*

* C. O’Brien, ‘I Trade Therefore I Am: Legal Personhood in the European Union’ (2013) 50 *Common Market Law Review* 1643.
* Marija Bartl, ‘Internal Market Rationality: In the Way of Reimagining the Future’, 24 *European Law Journal*, 2018.
* Marcus Klamert and Dimitry Kochenov, ‘Article 2 TEU’, in Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (eds), *The Treaties and the Charter of Fundamental Rights – A Commentary,* Oxford: Oxford University Press, 2019, pp. 22–30 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3383828>

*Case of the week:*

Case C-1/58 *Stork* ECLI:EU:C:1959:4

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61958CJ0001>

1. **Values and the *acquis*** (24 November, 1.30pm)

***We dissect the Union’s engagement with values and principles as part of its law***

* Dimitry Kochenov, ‘The *Acquis* and Its Principles: The Enforcement of “Law” versus the Enforcement of “Values” in the European Union’, in András Jakab and Dimitry Kochenov (eds), *The Enforcement of EU Law and Values*, Oxford: Oxford University Press, 2017, pp. 9–27: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2822327>

*Please also pick one of the following two works. This one:*

* Laurent Pech, ‘The Rule of Law as a Constitutional Principle of the European Union’, *Jean Monnet Working Paper* (NYU Law School) 04/2009: <http://www.jeanmonnetprogram.org/paper/the-rule-of-law-as-a-constitutional-principle-of-the-european-union/>

*or this one:*

Dimitry Kochenov, ‘Neo-Mediaeval Permutations of Personhood in Europe’, in Loïc Azoulai, Ségolène Barbou des Places and Etienne Pataut (eds.), *Ideas of the Person and Personhood in European Union Law* (Oxford: Hart, 2016), 133:

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2760968>

*To know more:*

* Gareth Davies, ‘Social Legitimacy and Purposive Power: The End, the Means and the Consent of the People’, in Dimitry Kochenov, Gráinne de Búrca and Andrew Williams (eds.), *Europe’s Justice Deficit?* (Oxford: Hart, 2015), 259.
* Gustav Peebles, ‘“A Very Eden of the Innate Rights of Man”? A Marxist Look at the European Union Treaties and Case Law’, 22 *Law and Social Inquiry* 1997, 581.

*Case of the week:*

Case C-294/83 *“Les Verts”* ECLI:EU:C:1986:166

<https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=294/83&td=ALL>

1. **The recent values’ revolution** (1 December, 1.30pm)

***We focus of the EU’s responses to the recent values’ crisis***

*Please read one of the following two works. This one:*

* Paul Blokker, ‘The Democracy and Rule of Law Crises in the European Union’, *RECONNECT Deliveerable 14.1* (Leuven), 2021, pp. 1–62: <https://reconnect-europe.eu/wp-content/uploads/2021/07/D14.1_web.pdf>

*or this one:*

* Dimitry Kochenov and Petra Bárd, ‘The Last Soldier Standing? Courts vs. Politicians and the Rule of Law Crisis in the New Member States of the EU’, 1 *European Yearbook of Constitutional Law*, 2019, pp. 243–287: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3716760>

*To know more (in meticulous detail):*

* Laurent Pech and Dimitry Kochenov, ‘Respect for the Rule of Law in the Case-Law of the European Court of Justice’, SIEPS (Stockholm), 2021: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850308>
* Tomasz Koncewicz, ‘The Supranational Rule of Law as First Principle of the European Public Space – On the Journey in Ever Closer Union among the Peoples of Europe in Flux’ (2020) 5 *Palestra* 167;
* Kim Lane Scheppele, Dimitry Kochenov and Barbara Grabowska-Moroz, ‘EU Values Are Law, after All’ (2020) 39 *Yearbook of European Law* 3–121: <https://academic.oup.com/yel/article/doi/10.1093/yel/yeaa012/6064852?searchresult=1>

*Case of the week:*

Case C-64/16 *Portuguese Judges* ECLI:EU:C:2018:117

[*https://curia.europa.eu/juris/document/document.jsf?text=&docid=199682&doclang=EN*](https://curia.europa.eu/juris/document/document.jsf?text=&docid=199682&doclang=EN)

1. **Measuring values** (1 December, 3.40pm)

***We discuss how far science can help law in determining the levels of compliance***

Readings TBA

1. **Supranational vs. national standards** (7 December, 1.30pm)

***We engage with the potential of emerging double standards in Europe values-wise***

* Dimitry Kochenov, ‘EU Law without the Rule of Law’, 34 *Yearbook of European Law*, 2015, 74–96: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2642689>

*Please also pick one of the following readings. This one:*

* Dimitry Kochenov and Graham Butler, ‘The Independence and Lawful Composition of the Court of Justice of the European Union’, *Jean Monnet Working Papers* (NYU Law School), No. 2/2020, pp. 1–23: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3716760>

*or this one*

* Dariusz Adamski, ‘The Social Contract of Democratic Backsliding in the “New EU” Countries’, 56 *CMLRev.*, 2019, 623–666.

*Case of the week:*

Opinion 2/13 (*ECHR Accession II*) ECLI:EU:C:2014:2454

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7932544>