

Outline of ENCJ keynote address by Professor Laurent Pech:

SLIDE 1

- The EU is said to be based on a number of fundamental values and principles which the EU Treaties also describe as values common to both the EU and its Member States.
- This is considered by the ECJ to be “fundamental premiss” underlying the EU legal order and on the basis of which principles such as mutual trust and mutual recognition are considered the norm and not the exception.
- What I have called “rule of law backsliding” poses an existential threat to the EU and its functioning as it fundamentally undermines this “fundamental premiss”.
- By rule of law backsliding, I mean the process through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic state and entrenching the long-term rule of the dominant party.
- The notion of backsliding implies that a country was once better, and then regressed.
- A key feature of this process of weakening checks and balances is that it reflects a deliberate strategy of a ruling party.
- What would a ruling party engage in such a process? The (unadvertised) goal is to establish electoral autocracies with elections possibly “free” but no longer “fair”.
- In this situation we end up with de facto one-party states in which elected officials of the ruling party claim exclusive authority to act on behalf of ‘the people’.
- This end-product is what can be called “democratorships”, i.e. regimes suspended between democracy and dictatorship with features of both.

SLIDE 2

- Faced with this unprecedented challenge, EU institutions have struggled. They have first struggled to understand what they were dealing with before struggling on how to address the problem.
- To understand why EU bodies have struggled, it is important to understand the strategies used by would-be autocrats.
- [Describe the key points on the slide]

CONCLUSION

- To end on a more positive note, let me however mention some positive developments, the first of which was the Commission's decision to activate Article 7 against Poland followed by a very important ECJ ruling in the case known as the "Portuguese judges" case.
- The Commission's multiple infringement actions and its proposal issued in May 2018 to suspend EU funding in situations of "generalised deficiencies", which looks increasingly as having a serious chance of being adopted, coupled with the fact that European political parties are starting – too slowly and reluctantly but starting nonetheless to police their "bad apples", are starting to produce effect.
- One may mention in this respect the recent "change of heart" in Romania regarding their so-called "judicial" reforms and the recent decision of the Hungarian government to suspend the launch of their widely criticised new administrative court system. The Polish government's defeat when it comes to their attempted purge of the Supreme Court should also be noted.
- Your organisation itself should be commended for its decision to suspend the Polish National Judicial Council last summer.
- Yesterday, on my way to Bratislava, I came across an opinion piece published by Bloomberg which is entitled "The EU is Winning its Rule-of-Law Challenges". While I do not share the author's diagnosis, a similar piece would have been unthinkable two years, one year, or even a few months ago.
- It is too early to say if the tide is turning but it is good to see more peoples and organisations waking up to the systemic threat to the rule of law we are facing (...)

