



## **EUROPEAN COUNCIL: Topic 2**

# **THE ISSUE OF JUDICIAL OVERREACH IN EASTERN EUROPE**

### **Background:**

#### **The EU court system**

The court system of the European Union is composed of three strands: the Court of Justice, the General Court, and specialized courts in specific areas. These EU courts ensure that the interpretation and application of EU law is observed. When the EU was founded, member countries agreed on the sovereignty and the authority of the council, which had power and jurisdiction over all EU member states and its laws.

Countries in the past have been reprimanded and fined for breaking these laws (most famously Poland, though other members have been fined before).

#### **Poland**

The Polish government for several years has been complaining that its constitution states that the Polish court is/should be the highest court within Poland, and that no outside force should be able to supersede it.

The current government of Poland has raised concerns over this conflict of interest.

This issue has rejoined the spotlight due to the current shift in views towards the LGBTQI+ community and the migrant crisis in the European council. The Polish government states that it should be able to enforce its own laws for each of these key issues and should be able to choose how many immigrants enter/migrate through the country. Meanwhile, the EU argues that its laws are above those of any single nation within it.

#### **Hungary**

The Hungarian government has been hit by fines due to its harsh laws of immigration of migrants outside from the European union. The current Hungarian government under Viktor Orban has taken an anti-European court policy resulting in huge conflicts of interest.

#### **The beginning of the European refugee crisis**

The European refugee crisis that began in 2011 is only getting worse as more and more migrants from the east are forced out of their countries by either conflict, famine or both simultaneously. Moreover, despite the fact the EU has told countries on the eastern side of the EU to take in many immigrants, many of these countries have refused, resulting in them being fined by the EU.



### **Current Situation:**

#### **The EU court system**

The EU courts are still the strongest court in every EU country and still have been fining Poland, Hungary and other EU member states for breaking EU rules or disobeying the EU courts. Many countries are beginning to argue that EU courts should not be the highest court in any country.

#### **Poland**

Poland has sued the EU courts several times for forcing them to take on immigrants and forcing them to make changes to laws when it comes to the rights of the LGBTQI+ community. The EU argues Poland is only using them for money while ignoring the laws they initially agreed to follow, while Poland argues that the EU has too much power in Poland and should back down and has less official power.

#### **Hungary**

The EU courts have continued to sue Hungary, which has been hit by fines several times. The Hungarian government under Viktor Orbán threatens to leave the EU and to close down land borders to all immigrants in retaliation.

#### **The European refugee crisis**

The European refugee crisis has gotten much worse due to many people evacuating from the Middle East that came after the Arab Spring. Borders are getting tighter and death tolls are racking up.

### **Important understandings:**

- European union sovereignty (The EU courts have power over all member states)
- Countries either follow the rules of the European Union or they may get kicked out of the union or face harsh fines/punishments
- More regional independence as an option: courts in countries get more independence and the EU courts act as an intermediary and advisory board
- The EU loses its status as a unitary body on laws
- Exceptions made for Poland and countries with conflicting constitutions (requires compromise between the major blocs)



### **Possible solutions:**

#### **European union sovereignty**

1. The courts of the European Union have jurisdiction over all courts within Europe and are the greatest authority in every single European union member's judicial system.
2. Countries agree to place punishments and rewards for countries and either follow or break the rules
3. This is supported by France, Germany and predominantly the western part of the EU

#### **More regional independence**

1. The European Union's judicial system is seen more as guidelines and advice, and thus need not be enforced
2. Countries agree to work towards a common goal but without legal consequences
3. This is supported by Poland, Greece, Hungary and predominantly the eastern side of the EU

### **Further reading:**

- [Europe Debates | Rule of law: Does Poland have a point?](#)
- [Poland-Belarus migrant crisis: Where does the EU stand?](#)
- [Europe's migrant crisis: The year that changed a continent](#)
- [EU court begins hearing Hungary and Poland dispute over rule of law](#)

### **Bibliography:**

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