

Political Gains by Judicial Means: Institutional Conversion of the EU's Rule of Law Policy

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ABSTRACT

Poland and Hungary's ongoing rule of law crisis has been characterized as a foundational challenge to the European Union. Notably, studies have focused on how the European Commission, as the 'guardian of the treaties,' has addressed (or failed to) the systemic violations of EU fundamental values in both countries. However, the Commission's policy response towards the rule of law breaches has not remained static from its initial scope conditions and purpose; instead, developments in European case law have led to variation in outcomes in different instances of breaches across the Member States. This prompts the question: What have been the mechanisms for reshaping the EU's policy responses concerning the rule of law breaches? This article examines how the Commission, along with political entrepreneurs, capitalized on the independence of the Court of Justice of the European Union (CJEU), shifting the locus of political authority within the legal order of the Union. This research employs process tracing based on the relevant case law, official communications, policy documents and institutional developments within the European institutional landscape between 2000 and 2021. The findings reveal a two-fold mechanism that relies on a new interpretation of Art 19 (1) and a new line of case law issued by the CJEU, through which the Commission expanded its policy scope regarding the rule of law. These findings contribute to the broader literature on gradual institutional change within European Union Studies.

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