

Impact case study (REF3)



Institution: Middlesex University
Unit of Assessment: 18 LAW
Title of case study: Challenging Rule of Law Backsliding in the European Union
Period when the underpinning research was undertaken: Professor Laurent Pech: 1 January 2000 – Present Dr Joelle Grogan: 1 October 2012 – Present Research conducted collaboratively at Middlesex: 2016-2020
Details of staff conducting the underpinning research from the submitting unit:



- (i) Demonstration that all core components of the “rule of law” need to be fully justiciable;
- (ii) Exposure of shortcomings in the EU’s available instruments for external promotion of the rule of law;
- (iii) Assertion that the “rule of law” deficit in the EU’s constitutional framework was largely remedied by the Lisbon Treaty;
- (iv) Evidence that the EU faces a “clear and present danger ” in an increasing number of EU countries, in what Pech defined as “rule of law backsliding” (4) (a 2017 article ranked as the most downloaded article from the *Cambridge Yearbook of European Legal Studies* site).

Grogan’s published research insights include:

- (i) Identification of commonality but also tension between national and EU conceptions of the rule of law;
- (ii) Assessment of strengths and deficiencies in responses to “rule of law backsliding”;
- (iii) Highlighting of rule of law issues associated with UK withdrawal from the EU, especially delegated legislative power, the separation of powers, and the impact of Brexit on the framework for UK rights protection (6);
- (iv) Diagnosis of rule of law issues in EU states’ responses to COVID-19 and their remedy.

By making their research widely accessible, through blogs and media interviews, Pech and Grogan have maintained a continuous public research presence. Pech’s Twitter has ~ 9,500 followers across Europe; Grogan contributes legal updates and commentary to the *Verfassungsblog* and *LSE Brexit Blog*, among others, and has ~2,100 followers. Grogan has also distilled her “rule of law” analyses into an accessible public legal education project, “StickyTrickyLaw”, a format with a social media following of ~2,100. Together Pech and Grogan curate an open access Article 7 databank of materials related to measures tackling rule of law backsliding under DEM-DEC (<https://www.democratic-decay.org/article-7-eu>).

3. References to the research

Key outputs:

- 1) Pech and Grogan, ‘Upholding the Rule of Law in the EU: What Role for the EUFRA’, in R. Byrne and H. Entzinger (eds), *Human Rights Law and Evidence-Based Policy. The Role of the EU Fundamental Rights Agency* (Routledge, 2020).
- 2) Pech and Grogan et al, *Meaning and Scope of the EU Rule of Law*, RECONNECT Deliverable 7.2, 30 April 2020: <https://reconnect-europe.eu/wp-content/uploads/2020/05/D7.2-1.pdf>.
- 3) Pech, ‘Judicial independence under threat: The Court of Justice to the rescue’ (2018) 55 *Common Market Law Review* 1827-1854.
- 4) Pech and Kim Lane Scheppele, ‘Illiberalism Within: Rule of Law Backsliding in the EU’ (2017) 19 *Cambridge Yearbook of European Legal Studies* 3-47.
- 5) Pech and D Kochenov, ‘Better late than never: On the European Commission’s Rule of Law Framework and its first activation (2016) 54(5) *Journal of Common Market Studies* 1062-1074.
- 6) Grogan, ‘Rights and Remedies at Risk: The Future Post-Brexit’ [2020] *Public Law* 683.



Further, indirect impacts on legal proceedings have also occurred, including that the law relating to access to EU documents has begun to be reshaped as a result of Pech's initiation of proceedings against the European Council, in Case T-252/19 Pech v Council <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62019TN0252&from=EN>

Policy-making impact

In 2018 and 2019, the European Parliament adopted proposals on an EU mechanism on Democracy, the Rule of Law and Fundamental Rights (PE 579.328, April 2016), based on a report commissioned by the European Parliamentary Research Service with Pech as lead author. Pech's recommendations have been adopted by the European Commission (July 2019; <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2019%3A343%3AFIN>).

Pech has also been widely consulted by European legal bodies. Examples include:

(i) by the LIBE Committee in preparing its report on a proposal calling on the Council to activate Article 7(1) TEU (see Report A8/0250/2018, 4 July 2018). Based on his published findings, Pech advocated activation of Article 7(1), a course of action followed in September 2018;

(ii) by rapporteurs of a proposal for a European resolution regarding respect for the rule of law within the EU (see Proposal No 1300 and Information Report No 1299, 2018). Pech's view and recommendations were endorsed by the two MPs in their report;

(iii) by drafters of a Flemish Parliamentary resolution regarding the rule of law situation in Poland. The resulting resolution urged by Pech was the first time a parliamentary body denounced the rule of law situation in a different EU country (Vlaams Parlement, 1423 (2017-2018) Nr. 1).

Alongside such direct consultation, Pech has also contributed to policy-making discussion regarding rule of law initiatives in a range of "closed" meetings whose content remains confidential (e.g. the session organised by Commission officials on 26 April 2019).

Grogan has similarly been involved with confidential policy discussions related to Brexit and COVID-19. Her rule of law recommendations were subsequently cited by the European Parliament in the resolution on the impact of COVID-19 measures (Source 7.2) 2020/2790(RSP)).

