

## **Divided by common values? Divergent interpretation of Art. 2 TEU amongst European Member States**

### **Moot Court**

24<sup>th</sup> – 28<sup>th</sup> June 2019, Brussels

The Summer School takes place within the framework of the teaching project PROTEUS. PROTEUS is a multinational and interdisciplinary course in the law and politics of the European Union, using a simulation exercise or moot court carried out by way of cooperation between different partner institutions.

#### **Executive Summary:**

The question whether some Eastern member states violate democratic norms and do not uphold the rule of law according to Art. 2 TEU is recently highly debated in the EU's institutions and member states. On the one hand, the European Commission laid down a proposal in January 2019 that establishes a link between the respect for the rule of law in member states and financial transfers from the EU. Moreover, the European Commission also proposed to the Council to adopt a decision under Art. 7 TEU against Poland, while the European Parliament voted in favour of launching Art. 7 TEU against the Hungarian government. On the other hand, Poland still did not rescind its judicial reforms condemned both by the European Court of Justice and the Hungarian government warned that such proposals and votes against Central European member states would only lead to further conflicts within the EU. The European Union seems to be divided by common values. In this seminar, students took part in a Moot Court which focused on the interpretation of Art. 2 TEU in the cases of Poland, Hungary and Romania.

The seminar is embedded into an interdisciplinary and international event bringing together advanced students from all over Europe. It combines the application of political and legal knowledge with elements of a simulation exercise and a summer school. Every participant had the possibility to practice real-life situations in English by performing a specific role in a Moot Court.

The seminar started with internal meetings of the German group, consisting of political sciences and law students, and culminated in an international summer school and simulation exercise (Moot Court) on negotiating on the interpretation of Art. 2 TEU in the cases of Poland, Hungary and Romania taking place in Brussels between June 24 and 28, 2019.

During the first three days, the students received profound knowledge of many facets of the topic in a series of presentations and discussions approaching the topic from unique angles and perspectives. In a Moot Court on the last two days, the students could then apply their newly gained knowledge by being stuck into the process of negotiations in their new team roles.

**Monday 24<sup>th</sup> June 2019**

**Representation of the State of North Rhine-Westphalia to the European Union**

**Stephan Hobe**, University of Cologne and Jean-Monnet Chair for Public International Law, European Law, European and International Economic Law

**The future of the EU: values in crisis?**

**Stephan Hobe**, University of Cologne and Jean-Monnet Chair for Public International Law, European Law, European and International Economic Law

*By Teresa Fachinger and Yanelvis Hechavarría*

Prof. Dr. Dr. h.c. Stephan Hobe inaugurated the Summer School and Moot Court that took place in Brussels, where Law and Political Science students from Cologne and Istanbul came together. This interdisciplinary approach was highly appreciated in his introductory remarks, as a diverse Europe would also need to be studied from various disciplines.

As an answer to the question “Where do we stand now?” he briefly summed up Europe’s current situation by mentioning the high turnout in the European elections and the election results in Istanbul, which in his opinion were a symbol of democracy. Whereas people tend to focus on the problems and even speak of a “European decline”, he criticized that they don’t highlight the positive aspects and described the EU as the “perhaps most successful project of cooperation that you can think of”. Different backgrounds came together, achieving (to different extent) freedom, peace and welfare for more than 70 years.

However, Europe had to face several difficulties over the last years, as countries come to question the European identity and wonder where the EU is aiming at. Another problem is the lack of a common defence strategy or a European army. In addition, Europe often does not speak with one voice, thus its positions lose their importance on the international stage. The sovereign debt crisis, Brexit and the migration challenge are in his opinion the three most important European crises.

When speaking about European values, the treatment of refugees could count as a good indicator for the (lacking) respect of those values. As examples of value violations, he further mentioned the replacement of critical judges in Poland. He then underlined the importance of the values, characterizing European identity. In his opinion, although countries having different opinions on the intake of refugees, European countries especially cannot afford to deviate from the rule of law.

To conclude, he expressed to be optimistic. The most important thing Europe must consider is where it wants to stay in this globalized world and then speak with one voice and not with 27 different ones.

**Amnesty International European Institutions Office**

**Berber Biala Hettinga**, Senior Executive Officer, Legal Affairs/Human Rights in the EU

*By Nicola Runge and Ann-Kathrin Schäfer*

The Amnesty International Office in Brussels tries to bring the opinions of Amnesty International to the EU level and encourage politicians to take actions but also to improve the own bodies of law and the other institutions of the European Union on how to deal with Human Rights. This includes the



enhancement of the civil society engaging with the EU and supporting the framework to deal with issues like terrorism or racial violence and convincing the parliament or commission to take action.

Besides, they also deal with country-focused work. Currently, especially Hungary and Poland became a huge issue showing that the idea of making the EU better and better is, at this time, paused while they are fighting for the EU not getting worse.

Berber Biala Hettinga talked about the case of Hungary and the consequences taken by the European Parliament. In her opinion, Hungary is violating the values of Art 2 TEU by implementing the new Media Law and new constitutional laws that endanger the judiciary. In 2015, Hungary showed a very strong reaction against migration. These events led to the very sudden situation in which she had to determine how serious the breaches are and how to apply EU law. Especially the triggering of Art 7 TEU with its consequences, was a difficult decision to take care of.

Simultaneously, the situation in Poland got worse as well with several changes of laws regarding the Media and the justice system. Hence, there were two situations where the idea of triggering Art 7 TEU was a very real situation and they have been confronted with the complexity of what a huge deal even the triggering would be. Eventually, in December 2017 Art 7 TEU was triggered in regard to Poland and the European Parliament triggered Art 7 TEU regarding Hungary.

Moreover, Berber told us about situations where Amnesty International was trying to reach out the members of the European Parliament to discuss the situation and provide further information but realized that the MEPs have been informed so badly and only by one side, so that is was quite shocking to realize who decides about these kind of important issues without the adequate knowledge.

**Tuesday 25<sup>th</sup> June 2019**

**Transparency International EU**  
**Illka Penttinen, Project Assistant**

*By Isabell Kahle and Amélie Bischoff*

Transparency International is a global NGO coalition which fights corruption. There are all in all 24 chapters in the member states of the EU, their secretariat being based in Berlin. We visited the EU office in Brussels. We met with Illka Penttinen who introduced us to their chapter's work: the prevention of corruption and the promotion of integrity, transparency and accountability in the EU institutions, policies and legislation. In the EU the risks for corruption are due to a large volume of legislation, low trust in the institutions and decisions concerning the budget. Also, there is still a lot of lobbying taking place behind closed doors- transparency being an issue that needs to improve. Penttinen told us about Transparency International's attempts to approach MEPs and decision makers, however, he pointed out that the access of NGOs is still quite limited in comparison to businesses.



There are already more MEPs who make transparent with whom they meet for lobbying, however this still did not become mandatory but remains a voluntary act.

We discussed different financial scandals such as the cases of the Panama and Paradise Papers which became known in 2016 as well as Lux Leaks from 2014. Another issue addressed was the responsibility of the EU to protect whistle blowers and journalists to avoid what occurred to Daphne Caruana Galizia, a Maltese journalist and anti-corruption activist who was assassinated in a car bomb attack due to her continuous investigations in government corruption and money laundering. As the focus of our summer school was on the rule of law in the member states of Hungary, Poland and Romania, different questions also came up concerning the role of the EU in the promotion and protection of these values and Transparency International's work in these countries. In Hungary, for example, the work of the Hungarian colleagues is very challenging due to the Hungarian law on foreign-funded organisations and the restricting and rather hostile measures taken by Orban's government towards critical organizations. However, Penttinen stressed that not only in these three countries, but also in others, such as Malta, the situation is alarming and has to be closely observed. All in all, we had a lively discussion with Penttinen who gave us interesting insights of Transparency International's work.

### **Permanent Representation of Poland to the EU**

**Łukasz Wielocha**, Head of Unit in International Projects Department,  
Prime Minister Chancellery

**Martin**, Legal Adviser, Permanent Representation of the Republic of Poland to the European  
Union in Brussels

*By Leonie Klewinghaus and Sven Christian Raphael*

Łukasz Wielocha, Head of Unit in the International Projects Department of the Prime Minister Chancellery, and his colleague working as legal advisor welcomed us at the Permanent Representation of Poland to the EU. Wielocha began his presentation with a short introduction to the history of Poland as a nation state for giving us a better understanding of the reasons and motivations behind the controversial amendments that were part of the Polish judicial reform initiated in 2015. He emphasized that Poland always had to fight for its sovereignty and freedom and that the Polish people has made an astonishing progress within the last 30 years to catch up with the "West".

What is more, Wielocha remarked that despite such positive developments in several fields (e.g. infrastructure, education) there are still underdeveloped sectors left that have to be improved. By stressing this finding, he referred in particular to the medical care in Poland and its judiciary. According

to him, there has been no fundamental change in the judicial system for the last 30 years since the fall of the communist regime. Hence, he concluded that on this account any reform would on the one hand be extremely difficult but on the other hand even more necessary to keep the country thriving. Another aspect that Wielocha emphasised was the low trust of the Polish people in its judiciary that is frequently surveyed. He traced the lack of confidence to a certain amount of inefficiency within the system.

The second part of the event regarded the Polish provisions of national legislation which entered into force in July 2018. The speaker depicted the most important amendments and referred to their withdrawal after the issuing of interim measures by the Court of Justice of the European Union in October 2018 which had been initiated by the European Commission.

**European Commission**  
**Aristotelis Gavriiadis, Directorate General Justice and Consumers**  
**The EU and the Rule of Law**

*By Steffen Schönhaar and Max Broich*

*Aristotelis Gavriiadis*, Directorate General Justice and Consumers, talked about the way countries work together in the EU. He referred to Art. 2 Treaty on European Union and stressed the difference of minority rights and the rights of persons belonging to minorities. According to him, there are two member states (France and Germany) and Turkey that do not want to recognize minorities. This is the reason why the formulation of Art. 2 TEU has been agreed on the lowest and not the highest level. Moreover, he mentioned the definition of rule of law, which is a principle common to all EU member states. There is no fixed definition but a common understanding. *Gavriiadis* illustrated the importance of the rule of law by referring to a statement by Winston Churchill: “*Democracy means that if the doorbell rings in the early hours, it is likely to be the milkman.*” This means, the definition is very limited and one can only appreciate and define what the rule of law is, when you do not have it (for example freedom). Furthermore, judicial protection of the values in Article 2 Treaty on European Union before the courts need three major aspects to exist: Independency, efficiency and quality. The example of a dysfunctional system that does not fulfill these preconditions can be seen in Greece during the financial crisis. Problems in Greece are partly due to the judicial system, which is competent but not effective, as there are long proceedings. Additionally, it takes four to five years to proceed before a civil court, which is not efficient. In a further step, he talked about the application of principles. The European Union tries an anticipatory system of both a working judiciary and good governance. The EU also keeps track on the developments and does evaluation: For example, the evaluation of member states improvement. Finally, *Gavriiadis* talked about the Rule of Law Toolbox: Regular monitoring, financial



instruments and rule of law crises. To solve a bad judicial system, you could add more selective procedures for transparency. In the EU there is a self-critical line. Members have the ability to recognize problems and solve them. However, there is too much influence of the executive and we need a better dialogue between the countries.

**Wednesday 26<sup>th</sup> June 2019**

**European Policy Centre**  
**Janis Emmanouilidis, Director of Studies**  
**Divided by common values**

*By Julian Schophaus*

Mr. Emmanouilidis, the director of studies at the European Policy Center, started our meeting by briefly introducing himself, underlining his German-Greek background. He then laid down the structure of his talk which was divided into two main topics. One being the current state of the European Union, the other the future of it.

This structure was repeated when he started speaking about the state of the Union. Firstly, he underlined that there are two equally true narratives to describe the current state of the European Union. One is an optimistic view about the European Union: the current economic situation is good, the Union showed a very high level of resilience in the last years, a high level of good restructuring reforms is maintained at the moment, there is a general high degree of unity amongst the member states especially in the face of Brexit and the European Union is widely supported by its citizen. However, there is also a negative narrative which goes as follows: in the recent years the fragmentation and distrust between the member states has risen to unprecedented levels, the former mentioned reforms are still not enough and the ones already passed are watered down, the economic diversion/inequality amongst and even in the member states is still high and will only deepen and the EU's global role is way too weak.

Given these described circumstances, Mr. Emmanouilidis tried to predict and give us a look into the future of the EU. He made out two major challenges for the EU in the foreseeable future. The first one being the just described fragmentation amongst the member states which will increase according to Mr. Emmanouilidis and could potentially paralyze the EU as a whole. The second challenge concerned the member states themselves where he predicted a rising level of polarization inside each countries societies both in an economic and a political sense given the recent successes of extreme parties.

Mr. Emanouilidis closed his lecture by briefly touching upon the recent elections of the European Parliament where he gave a short overview of the development of populist parties inside the member states.

The following discussion was opened by a question that asked about an overview over the Think-Thank scene in Brussels and its mechanisms which Mr. Emanouilidis happily provided and where he underlined that the European Policy Center was one of the first Think-Thanks in Brussel. A further point of discussion was the question on what keeps the EU together after all to which our host responded that it is the belief that Europe is stronger together. This was followed by a lively discussion about the values of the European Union, their definition and how a more active international role of the EU could potentially affect those values. The discussion and the visit were then closed by the controversial question if the current failure of the so called “Spitzenkandidaten-system” meant an increase of the democratic deficit of the EU or not. There were also different views among the attendees, but Mr. Emanouilidis denied that this failure meant a rollback.

## **Thursday and Friday, 27<sup>th</sup> – 28<sup>th</sup> June 2019**

### **The Simulation Exercise: European Council Summit**

Day four and five of the PROTEUS Summer School 2019 were dedicated to the Moot Court – a simulation of the European Court of Justice. The case before the court concerned violations of the European Union’s common values.

The combination of academic research, practical examples of EU affairs as well as the simulation exercise improves different soft skills, which lead to the enhanced employability of the students. The presentation of the simulation exercise in multinational and interdisciplinary teams stimulates not only the academic exchange but also the ability to work and communicate in a team. The direct dialogue with practitioners facilitates application-oriented research and learning. The simulation exercise, additionally, fosters the communicative skills as well as the student’s awareness of different national characteristics. At the same time, playing a specific role in the Moot Court demands intellectual flexibility since the students need to abandon certain ways of thinking and look at problems from a different perspective.



Furthermore, the students can learn which challenges are connected with European negotiations such as different interests, cultures and traditions.

The whole simulation exercise was supervised Dr Deniz Kuru and Dr Martin Gegner from the *Turkish-German University*, as well as Aline Bartenstein and Yasmin Vlase-West from the PROTEUS team of the *University of Cologne*.

This report was written by Amélie Bischoff, Max Broich, Teresa Fachinger, Yanelvis Hechavarría, Isabell Kahle, Leonie Klewinghaus, Sven Christian Raphael, Nicola Runge, Ann-Kathrin Schäfer, Steffen Schönhaar and Julian Schophaus.

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